09:23:12

1   IN THE UNITED STATES DISTRICT COURT

2   FOR THE NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5

        CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
6   )
                          PLAINTIFF,   )   SAN JOSE, CALIFORNIA
7   )
                    VS.   )   DECEMBER 6, 2016
8   )
        ARISTA NETWORKS, INC.,   )   VOLUME 9
9   )   *REDACTED*
                          DEFENDANT   )   PAGES 1879-2157
10   _____)

11   TRANSCRIPT OF PROCEEDINGS
               BEFORE THE HONORABLE BETH LABSON FREEMAN
12   UNITED STATES DISTRICT JUDGE

13   A P P E A R A N C E S:

14   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                                 BY: DAVID A. NELSON
15   500 WEST MADISON STREET, SUITE 2450
                                 CHICAGO, IL 60661
16

17   FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                                 BY: SEAN PAK
18   50 CALIFORNIA STREET, 22ND FLOOR
                                 SAN FRANCISCO, CALIFORNIA 94111
19

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22   APPEARANCES CONTINUED ON NEXT PAGE

23   OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                                      CERTIFICATE NUMBER 13185
24

25   PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
                    TRANSCRIPT PRODUCED WITH COMPUTER

1   APPEARANCES (CONTINUED)

2   FOR THE DEFENDANT: KEKER & VAN NEST, LLP
                               BY: ROBERT ADDY VAN NEST
3   BRIAN FERRALL
                                     DAVID J. SILBERT
4   ELIZABETH K. MCCLOSKEY
                                     EDUARDO E. SANTACANA
5   RYAN WONG
                                     DAVID J. ROSEN
6   633 BATTERY STREET
                               SAN FRANCISCO, CA 94111-1809

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4   **JAYSHREE ULLAL**
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5   CROSS-EXAM BY MR. PAK   P. 1951
             REDIRECT EXAM BY MR. VAN NEST   P. 1968
6   RECROSS-EXAM BY MR. PAK   P. 1970

7   **DR. JEFFREY CHASE**
             DIRECT EXAM BY MR. KRISHNAN   P. 1972
8   CROSS-EXAM BY MR. JAFFE   P. 2003
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10   **MICHAEL VOLPI**
             DIRECT EXAM BY MR. VAN NEST   P. 2023
11   CROSS-EXAM BY MR. NELSON   P. 2046
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15   **PHILLIP SHAFER**
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16   CROSS-EXAM BY MR. WONG   P. 2066
             REDIRECT EXAM BY MR. PAK   P. 2075
17   RECROSS-EXAM BY MR. WONG   P. 2078

18   DEFENDANT'S

19   **JOHN BLACK**
             DIRECT EXAM BY MR. FERRALL   P. 2081
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	1	SAN JOSE, CALIFORNIA DECEMBER 6, 2016
09:25:04	2	P R O C E E D I N G S
09:25:04	3	(COURT CONVENED AT 9:25 A.M.)
09:31:03	4	THE COURT: GOOD MORNING, EVERYONE. PLEASE BE
09:31:05	5	SEATED.
09:31:06	6	ALL RIGHT. WE ARE ON THE RECORD OUTSIDE THE PRESENCE OF
09:31:09	7	THE JURY. LET'S SEE WHAT WE CAN GET ACCOMPLISHED THIS MORNING.
09:31:12	8	PARTLY, YOU HAVE TO LET ME KNOW WHAT YOU WANT.
09:31:15	9	I HAVE REVIEWED ALL OF THE DEPOSITIONS YOU'VE GIVEN ME, SO
09:31:18	10	I CAN DO THAT, BUT YOU HAD SOME OTHER MATTERS YOU WOULD LIKE TO
09:31:21	11	ADDRESS FIRST.
09:31:22	12	MR. VAN NEST: WE HAVE A GAME PLAN, YOUR HONOR, FOR
09:31:24	13	THIS MORNING.
09:31:25	14	THE COURT: EXCELLENT.
09:31:25	15	MR. VAN NEST: JUST TO LET YOU KNOW, THE OBJECTIONS
09:31:27	16	TO THE GOURLAY DEPOSITION HAVE BEEN WITHDRAWN ON BOTH SIDES, SO
09:31:31	17	THAT IS READY TO GO. I THINK WE NOTIFIED YOU LAST NIGHT.
09:31:35	18	THE COURT: THANK YOU.
09:31:36	19	MR. VAN NEST: WE JUST REACHED AGREEMENT ON PATIL,
09:31:40	20	P-A-T-I-L, THOSE HAVE BEEN WITHDRAWN AND THOSE ARE READY DO GO.
09:31:44	21	THE COURT: WELL, I AM DELIGHTED.
09:31:46	22	PLEASE DON'T HAND ME THINGS THAT YOU ARE STILL WORKING ON.
09:31:49	23	BECAUSE I DELAYED OTHER THINGS SO I COULD WORK ON THIS. I
09:31:53	24	ENCOURAGE YOU TO CONTINUE TALKING AND WORKING IT OUT IS THE
09:31:56	25	BEST THING, BUT THIS WAS MY FRUSTRATION YESTERDAY. I ASKED FOR

09:32:00 1   TWO DAYS BECAUSE, I'M SORRY TO SAY, I'M JUST NOT WORKING

09:32:04 2   24 HOURS A DAY ON THIS CASE. SO I HAVE TO MAKE JUDGEMENTS ON

09:32:09 3   WHEN I CAN FIT IT IN. SO I GUESS YOU WILL LET ME KNOW.

09:32:12 4   SO WHAT DO WE NEED TO DISCUSS THIS MORNING, MR. VAN NEST?

09:32:15 5   MR. VAN NEST: WHAT'S LEFT ON TODAY'S DOCKET,

09:32:19 6   YOUR HONOR, IS WE HAVE AN OBJECTION TO MR. CHASE, THE ARISTA

09:32:23 7   PATENT EXPERT WILL BE ON THIS MORNING. AND THERE'S AN

09:32:25 8   OBJECTION TO ONE OF HIS DOCUMENTS OR TESTIMONY.

09:32:27 9   AND THEN PROFESSOR BLACK, WHOM WE'VE HEARD ABOUT WILL BE

09:32:33 10   ON THIS AFTERNOON. THERE'S OBJECTIONS TO HIM. THE PARTIES

09:32:36 11   THOUGHT WE SHOULD DO CHASE FIRST SINCE HE'S COMING FIRST AND

09:32:39 12   THEN BLACK, AND THAT WILL CLEAR EVERYTHING OUT FOR TODAY. WE

09:32:42 13   SHOULDN'T HAVE ANYTHING ELSE THAT WE NEED TO DO TODAY.

09:32:47 14   THE COURT: WELL, I'M NOT READING ANY DEPOSITIONS

09:32:49 15   AGAIN UNTIL YOU TELL ME YOU'VE DONE EVERYTHING. YOU HANDED ME

09:32:52 16   ABOUT FOUR INCHES OF READING TO DO, I'M JUST BEYOND FRUSTRATED

09:32:57 17   WITH THIS.

09:32:57 18   MR. VAN NEST: WE APOLOGIZE, YOUR HONOR.

09:32:59 19   THE PARTIES HAVE BEEN WORKING LATE TO TRY TO GET THESE

09:33:02 20   THINGS RESOLVED AND GET THESE THINGS OFF THE TABLE AND TRY TO

09:33:05 21   SAVE THE COURT TIME.

09:33:06 22   I APOLOGIZE TO HANDING THOSE TO YOU YESTERDAY. WE DIDN'T

09:33:10 23   BELIEVE WE COULD REACH AGREEMENT, BUT BOTH SIDES URGED STAFF TO

09:33:13 24   CONTINUE WORKING ON IT AND THEY DID. NOW THEY STILL HAVEN'T

09:33:19 25   RESOLVED THE OTHER TWO, BUT THOSE AREN'T FOR TODAY. WE WILL

09:33:23 1   LET YOU KNOW IF WE HAVE REACHED AN IMPASSE OR NEED A

09:33:28 2   RESOLUTION.

09:33:28 3   SO WE HAVE CISCO'S OBJECTIONS TO THE EXHIBITS FROM

09:33:31 4   MR. CHASE, PROFESSOR CHASE.

09:33:33 5   THE COURT: ALL RIGHT. I SEE. I'M AWARE TO THE

09:33:35 6   EXTENT YOU WROTE THREE LINES ABOUT MR. CHASE, THAT THERE IS AN

09:33:40 7   OBJECTION TO EXHIBIT 5988. I HAVE A BARE BONES OBJECTION. AND

09:33:46 8   I DON'T KNOW ANYTHING ELSE. SO WHY DON'T YOU TELL ME WHAT THIS

09:33:50 9   IS ABOUT.

09:33:51 10   MR. KRISHNAN: SO IT'S CISCO'S OBJECTION.

09:33:53 11   THE COURT: YES, GOOD MORNING.

09:33:55 12   MR. JAFFE: SO THE DOCUMENT ITSELF RELATES TO AN IPR

09:34:00 13   RESPONSE THAT CISCO FILED IN RESPONSE TO ARISTA'S IPR ON THE

09:34:04 14   '526 PATENT. THE IPR WAS SINCE DENIED AND IS NO LONGER AT

09:34:10 15   ISSUE.

09:34:10 16   THEY'VE DISCLOSED OUR RESPONSE, THE PATENT OWNER'S

09:34:14 17   RESPONSE TO USE WITH PROFESSOR CHASE. AND WE'RE OBJECTING ON A

09:34:18 18   NUMBER OF GROUNDS, INCLUDING THAT FROM A RELEVANCE PERSPECTIVE,

09:34:21 19   FROM A 403 PERSPECTIVE, BECAUSE PRIOR ART IS NO LONGER AT

09:34:25 20   ISSUE, AND IT'S GOING TO BE CONFUSING TO THE JURY TO SEE THIS

09:34:28 21   KIND OF A DOCUMENT AND TRY AND UNDERSTAND IT.

09:34:31 22   THE ADDITIONAL REASON IS WE ARE CONCERNED THAT ARISTA,

09:34:37 23   THROUGH DR. CHASE, IS TRYING TO UNDUE THE COURT'S CLAIM

09:34:40 24   CONSTRUCTION ON THE EXACT ISSUES THAT WERE DEALT WITH IN THE

09:34:42 25   IPR. AND TO THE EXTENT THERE'S FURTHER GROUNDS FOR CONFUSION

09:34:46 1   UPON SEEING THIS DOCUMENT AND TALKING ABOUT ITS DETAILS, THAT'S

09:34:49 2   ANOTHER BASIS.

09:34:50 3   THE COURT: OH, I'M SURE DR. CHASE HAS NO INTENTION

09:34:54 4   OF UNDOING MY CLAIMS CONSTRUCTION. HE'S ABLE TO DISAGREE WITH

09:34:58 5   THE FEDERAL CIRCUIT, BUT FOR NOW THAT'S WHERE WE ARE, SO I'M

09:35:02 6   SURE THAT'S NOT HIS INTENTION.

09:35:04 7   WHY WOULD AN IPR RESPONSE BE SUBMITTED? YOU DON'T WANT TO

09:35:07 8   INTRODUCE IT INTO EVIDENCE.

09:35:08 9   MR. KRISHNAN: WE DO, YOUR HONOR. AND HERE'S WHY.

09:35:10 10   IT'S HIGHLY RELEVANT AND CONTRADICTS THE POSITIONS THAT

09:35:13 11   CISCO HAS TAKEN IN THIS COURT DURING TRIAL. THE IPR PETITION

09:35:19 12   RELATES LARGELY TO ONE CLAIM ELEMENT, AND THAT'S --

09:35:23 13   THE COURT: TO THE VALIDITY OF IT OR TO THE

09:35:26 14   INFRINGEMENT?

09:35:28 15   MR. KRISHNAN: WHILE IT WAS RELATED TO VALIDITY, THEY

09:35:30 16   MADE A NUMBER OF ADMISSIONS ABOUT THE CLAIM REQUIREMENT THAT

09:35:32 17   ARE GOING TO BE IMPORTANT AND THAT ARE AT ODDS WITH WHAT

09:35:34 18   THEY'VE TOLD THE JURY IN THIS TRIAL ALREADY.

09:35:38 19   SO THE REQUIREMENT IS THE ONE WHERE THERE MUST BE AT LEAST

09:35:44 20   ONE COMMAND ACTION VALUE FOR EVERY GENERIC COMMAND COMPONENT.

09:35:49 21   THE COURT: THAT WAS THE KEY CLAIMS CONSTRUCTION AND

09:35:50 22   I KNEW THAT'S WHERE THIS CASE WOULD PROBABLY RISE OR FALL.

09:35:53 23   MR. KRISHNAN: RIGHT. SO CISCO SAID IN ITS PAPERS

09:35:56 24   THAT THE PURPOSE OF THAT REQUIREMENT IS TO HANDLE PARTIAL

09:35:58 25   COMMANDS. DR. JEFFAY JUST PUT ON CONTRARY TESTIMONY LAST

09:36:03 1   FRIDAY. HE BASICALLY SAID THAT THIS CLAIM REQUIREMENT DOESN'T

09:36:07 2   HAVE ANYTHING TO DO WITH THE ABILITY TO HANDLE PARTIAL OR

09:36:10 3   INVALID COMMANDS.

09:36:11 4   THE COURT: SO THE DOCUMENT ITSELF IS CISCO'S

09:36:14 5   RESPONSE IN THE IPR.

09:36:17 6   MR. KRISHNAN: THAT'S RIGHT.

09:36:18 7   THE COURT: SEE DR. CHASE CAN'T AUTHENTICATE

09:36:22 8   ANYTHING. THAT'S WHERE WE ARE OFF ON ALL OF THESE. I'M JUST

09:36:25 9   SO UN USED TO EXPERTS BEING THE SOURCE FOR EXHIBITS BEING

09:36:29 10   ENTERED.

09:36:29 11   NOW THIS MAY BE AN ADMISSION, THIS MAY BE JUDICIAL NOTICE,

09:36:32 12   THIS MAY BE JUDICIAL ADMISSION HERE, IT MAY BE A LOT OF THINGS

09:36:36 13   BUT, AND WE GET INTO THAT WITH DR. BLACK, I KNOW, WE HAVE THE

09:36:41 14   OTHER ISSUE AS WELL. IT DOES SOUND RELEVANT. IT DOES SOUND

09:36:47 15   LIKE -- I MEAN, I'M NOT UNDERSTANDING WHY DR. JEFFAY WASN'T

09:36:50 16   CROSS-EXAMINED ON THAT, BUT HE WASN'T. AM I CORRECT?

09:36:53 17   MR. KRISHNAN: DR. JEFFAY SAID HE DIDN'T -- IT WASN'T

09:36:55 18   INCLUDED IN HIS MATERIALS CONSIDERED.

09:37:00 19   MR. JAFFE: THAT'S NOT ENTIRELY ACCURATE. HE

09:37:02 20   INCLUDED IT IN AN EXHIBIT TO HIS REBUTTAL REPORT THE ACTUAL

09:37:07 21   DECISION HIMSELF, SO THESE ARE THE MATERIALS HE CONSIDERED IN

09:37:09 22   FORMING HIS OPINIONS ON VALIDITY BUT VALIDITY IS NO LONGER AT

09:37:11 23   ISSUE SO THIS WASN'T SOMETHING HE DISCUSSED IN FURTHER DETAIL.

09:37:14 24   THE COURT: WELL, ARE THE STATEMENTS -- DO THEY GO TO

09:37:16 25   VALIDITY OR DO THEY GO TO THE DEFINITION OF -- IT GOES TO

1888

09:37:20   1   THE --

09:37:22   2   MR. KRISHNAN: SO THE STATEMENTS THAT I WOULD LIKE TO

09:37:24   3   ELICIT TESTIMONY ABOUT, THEY GO TO THIS REQUIREMENT, AND THE

09:37:29   4   STATEMENTS, THE ADMISSIONS THAT CISCO MADE ABOUT THE

09:37:31   5   REQUIREMENT ARE THAT THE PURPOSE IS TO HANDLE PARTIAL OR

09:37:36   6   INVALID COMMANDS, THAT WAS SOMETHING THAT DR. JEFFAY TESTIFIED

09:37:41   7   SOMEWHAT CONTRARY TO, I THINK HE WAS KIND OF CAREFUL ABOUT WHAT

09:37:44   8   HE DID, BUT HE LEFT AN IMPRESSION.

09:37:48   9   MR. VAN NEST: SLOW DOWN.

09:37:49 10   MR. KRISHNAN: HE LEFT AN IMPRESSION THAT THIS CLAIM

09:37:52 11   REQUIREMENT DIDN'T HAVE ANYTHING TO DO WITH INVALID OR PARTIAL

09:37:56 12   COMMANDS.

09:37:57 13   THEY SAID THAT THE REQUIREMENT IS UNIQUE AND LEADS TO A

09:37:59 14   PARTICULAR BENEFIT, THAT'S THE ABILITY TO HANDLE PARTIAL

09:38:02 15   COMMANDS.

09:38:03 16   AND THEY ALSO SAID THAT OUR PRODUCT, SIMILAR TO ARISTA'S,

09:38:07 17   DOESN'T PRACTICE THIS FEATURE. AND THAT'S, OF COURSE, A KEY

09:38:10 18   ADMISSION.

09:38:11 19   THE COURT: SO I GUESS, AND YOU WANT THE WHOLE

09:38:14 20   DOCUMENT ADMITTED? I MEAN, I DON'T EVEN KNOW -- I DON'T KNOW

09:38:19 21   WHETHER THERE'S OBJECTIONABLE MATERIAL IN IT. IT LOOKS LIKE

09:38:22 22   YOU WANT SOMETHING VERY FINITE PRESENTED TO THE JURY.

09:38:24 23   MR. KRISHNAN: WE COULD BE OKAY WITH A REDACTED

09:38:27 24   VERSION THAT JUST GETS IN THE PORTIONS THAT --

09:38:29 25   THE COURT: SO, LIKE I SAID I TOLD YOU, I'M DONE

09:38:33 1   LOOKING AT THEM ON MY IPAD, SO I DON'T KNOW WHAT THIS LOOKS

09:38:36 2   LIKE.

09:38:37 3   MR. JAFFE: YOUR HONOR, IF I MAY RESPOND BRIEFLY TO

09:38:40 4   ONE POINT.

09:38:41 5   SO WHAT COUNSEL IS TALKING ABOUT ARE SOME STATEMENTS BACK

09:38:43 6   AND FORTH. THEY ACTUALLY RAISED THIS EXACT POINT DURING THE

09:38:47 7   MARKMAN PROCEEDING. YOUR HONOR CONSIDERED THESE ISSUES AND

09:38:49 8   ISSUED HER CLAIM CONSTRUCTION. DR. JEFFAY SAID HE WAS APPLYING

09:38:52 9   THE CLAIM CONSTRUCTION AND DID APPLY THE CLAIM CONSTRUCTION.

09:38:55 10   THE ISSUES FROM THE STATEMENT WERE FULLY RESOLVED AS PART OF

09:38:57 11   THE MARKMAN PROCEEDING.

09:38:59 12   SO TO TRY AND BRING THIS IN IS ONLY TRYING TO CONTRADICT

09:39:03 13   THE STATEMENTS.

09:39:04 14   THE COURT: WELL, MY CLAIM CONSTRUCTION GOES AGAINST

09:39:08 15   WHAT ARISTA IS NOW CHARACTERIZING DR. JEFFAY'S -- HOW THE JURY

09:39:12 16   VIEWS THE TESTIMONY IS --

09:39:14 17   MR. KRISHNAN: YOUR HONOR, I DON'T THINK THE CLAIM

09:39:16 18   CONSTRUCTION HAS ANYTHING TO DO WITH THE ISSUE THAT I'M TALKING

09:39:18 19   ABOUT.

09:39:18 20   THE QUESTION IS WHETHER THE REQUIREMENT IN THE CLAIM LEADS

09:39:23 21   TO A PARTICULAR BENEFIT IN A PRODUCT THAT PRACTICES THAT CLAIM

09:39:27 22   ELEMENT.

09:39:27 23   THE COURT: SO WHAT DOES THE DOCUMENT LOOK LIKE? MAY

09:39:30 24   I SEE IT?

09:39:31 25   MR. KRISHNAN: I HAVE A COPY RIGHT HERE.

09:39:33   1   THE COURT: THANK YOU. I APPRECIATE THAT.

09:39:35   2   MR. KRISHNAN: AND I'VE TAGGED THE -- I MAY HAVE

09:39:39   3   ACTUALLY TAGGED THE WRONG PAGE FOR YOU THERE. I WAS TAGGING

09:39:43   4   THE PAGE THERE THAT SHOWS THERE WERE REALLY NO CLAIM

09:39:45   5   CONSTRUCTIONS AT ISSUE.

09:39:46   6   BUT PAGES 8 -- THE END OF PAGE 8, CARRYING OVER TO THE TOP

09:39:51   7   OF PAGE 9 IS THE KEY PARAGRAPH THAT I'M INTERESTED IN HAVING

09:39:58   8   DR. CHASE DISCUSS.

09:40:10   9   THE COURT: SO I'M JUST LOOKING AT THE DOCUMENT

09:40:12 10   ITSELF.

09:40:23 11   I'M GOING TO EXCLUDE THE DOCUMENT UNDER 403 AS A WASTE OF

09:40:27 12   TIME. YOU MAY QUESTION THE WITNESS ABOUT THE DOCUMENT, YOU MAY

09:40:30 13   ASK HIM ABOUT THE SUBSTANCE, YOU MAY REFER EVEN TO THE DOCUMENT

09:40:33 14   LIKE YOU WOULD NORMALLY DO WITH AN EXPERT AND HE MAY EXPLAIN

09:40:37 15   IT, HE MAY EXPLAIN THE SOURCE OF HIS OPINION, BUT THE DOCUMENT

09:40:42 16   ITSELF WOULD TAKE SO MUCH EXPLAINING TO THE JURY AS TO WHAT

09:40:45 17   THEY SHOULD CONSIDER AND NOT CONSIDER.

09:40:47 18   AND TO GIVE THEM A DOCUMENT WITH ONE PARAGRAPH UNREDACTED

09:40:50 19   WOULD RAISE SO MUCH CONCERN IN THE JURY'S MIND THAT I THINK IT

09:40:54 20   WOULD REALLY BE EXTRAORDINARILY CONFUSING OR JUST A HUGE

09:40:58 21   CONSUMPTION OF TIME TO EXPLAIN IT.

09:40:59 22   BUT I'M NOT GOING TO LIMIT YOU IN THE SCOPE OF THE

09:41:01 23   TESTIMONY THAT DR. CHASE MAY GIVE. SO LET ME HAND THIS BACK TO

09:41:05 24   YOU. OKAY.

09:41:06 25   MR. KRISHNAN: THANK YOU, YOUR HONOR.

09:41:07 1   I MAY, I TAKE IT, PRESENT THE TEXT ON THE SCREEN FOR THE

09:41:12 2   JURY TO SEE? AS A DEMONSTRATIVE.

09:41:15 3   THE COURT: TYPICALLY, WE ARE NOT DOING THAT UNLESS

09:41:17 4   IT'S AN ADMITTED EXHIBIT, BUT YOU CAN HAND THE DOCUMENT TO

09:41:21 5   THEM. YOU CAN ALWAYS HAND THE DOCUMENT TO THE WITNESS TO

09:41:24 6   REFRESH YOUR RECOLLECTION OF IT AND THEN HE CAN TESTIFY ABOUT

09:41:26 7   WHY THAT'S IMPORTANT TO HIS OPINION AND WHY HE BASED HIS

09:41:29 8   OPINION ON IT.

09:41:30 9   MR. KRISHNAN: OKAY. FAIR ENOUGH.

09:41:31 10   THE COURT: AND WHAT ELSE DO WE HAVE IN THIS

09:41:33 11   SUBMISSION BY CISCO? WERE THERE CONCERNS REGARDING DR. BLACK?

09:41:37 12   MR. NELSON: CORRECT, YOUR HONOR.

09:41:38 13   THE COURT: OKAY.

09:41:38 14   MR. NELSON: AND I HAVE THE EXHIBITS. I THINK IT'S,

09:41:43 15   CATEGORICALLY IT'S PROBABLY EASIER TO HANDLE.

09:41:46 16   SO ONE OF THE BIGGEST PROBLEMS WE HAVE IS WITH THE PRODUCT

09:41:49 17   MANUALS. AND YOU SAW SOME OF THIS -- AND THIS GOES TO THIS

09:41:56 18   WHOLE INDUSTRY STANDARD DEFENSE WE KEEP HEARING ABOUT. THIS

09:42:00 19   RANDOMIZED TESTIMONY THAT EVERYBODY IS OUT THERE DOING IT.

09:42:02 20   AND WE HAVE DR. BLACK WHO SAID DURING HIS DEPOSITION THAT

09:42:07 21   THE LAWYERS GAVE HIM A BUNCH OF MANUALS FROM THIRD PARTIES AND

09:42:10 22   HE WENT THROUGH THOSE MANUALS AND THEY LOOKED FOR COMMAND

09:42:14 23   NAMES.

09:42:14 24   AND SO WE HAVE NO AUTHENTICATION OF THESE. WE HAVE FOUR

09:42:18 25   THAT WE AGREE WERE PRODUCED PURSUANT TO SUBPOENA, SO WE ALREADY

09:42:23 1   HAVE STIPULATION.

09:42:24 2   I'M NOT TALKING ABOUT THOSE FOUR, I'M TALKING ABOUT THE

09:42:26 3   OTHER 30 SOME OR WHATEVER, I DON'T KNOW EXACTLY THE NUMBER.

09:42:30 4   BUT THEY ALL FALL INTO THE SAME CATEGORY. THEY ARE THIRD PARTY

09:42:34 5   MANUALS. WE CAN'T TIE THEM BACK TO PARTICULAR PRODUCTS.

09:42:37 6   THERE'S NO TESTIMONY AS TO WHETHER THESE THINGS WERE ACTUALLY

09:42:40 7   IMPLEMENTED.

09:42:40 8   AND WE KNOW IT'S PROBLEMATIC FROM THE EXHIBIT WE SAW

09:42:43 9   YESTERDAY, YOUR HONOR, WHERE ARISTA IS HERE TELLING EVERYBODY,

09:42:46 10   WE THINK IT'S INDUSTRY STANDARD, WE THINK EVERYBODY IS INDUSTRY

09:42:49 11   STANDARD. THREE OUT OF THE FOUR THAT DR. BLACK INTENDS TO TALK

09:42:52 12   ABOUT FOR HIS EXAMPLE TODAY WERE IN ARISTA'S OWN DOCUMENT

09:42:56 13   YESTERDAY FROM 2010, THE RELEVANT TIME PERIOD SAYING, WE ARE

09:43:01 14   SELLING, US AGAINST THEM, ARE COMPARING BECAUSE WE ARE, CISCO,

09:43:06 15   AND THEY ARE NOT.

09:43:08 16   SO IN TERMS OF THE -- WELL, THE AUTHENTICATION ISSUE, THE

09:43:15 17   FOUNDATION ISSUES, THE 403 ISSUES, ALLOW DR. BLACK TO SIMPLY GO

09:43:21 18   THROUGH A BUNCH OF UNAUTHENTICATED MANUALS AND TO GLEAN FROM

09:43:25 19   THAT -- OKAY. I CAN STOP.

09:43:27 20   THE COURT: YOU KNOW, THIS ADDRESSES OR TOUCHES ON AN

09:43:29 21   ISSUE THAT I WAS CONCERNED ABOUT WHEN I WAS READING THE

09:43:31 22   EXCERPTS FROM THE GAVIN CATO DEPOSITION.

09:43:34 23   AND THAT IS THAT THE TERM "INDUSTRY STANDARD" IS LIKE

09:43:37 24   LOOKING IN A MIRROR, IT'S WHATEVER YOU WANT IT TO BE. IT'S

09:43:40 25   WHAT THE REFLECTION I SEE TODAY IS.

09:43:42 1   AND WHEN I FINALLY GOT TO THE PORTION IN MR. CATO'S

09:43:47 2   TESTIMONY WHERE HE GAVE HIS PERSONAL DEFINITION OF INDUSTRY

09:43:49 3   STANDARD, IT WAS LIKE OH, HOW INTERESTING, I HAVE NO IDEA WHAT

09:43:54 4   YOU MEANT BY THAT, NOW I KNOW.

09:43:56 5   IT'S THE "I KNOW IT WHEN I SEE IT" STANDARD.

09:43:58 6   AND YOU KNOW, THAT'S THE PROBLEM HERE IS THAT FOR EVERY

09:44:02 7   WITNESS WHO TESTIFIES IT WAS INDUSTRY STANDARD, THAT DOESN'T

09:44:06 8   MEAN ANYTHING, THAT TERM MEANS NOTHING. IT MEANS I GET TO DO

09:44:09 9   IT BECAUSE I SAY SO.

09:44:11 10   NOW, THAT BEING SAID, THE COMMON USE OF THESE TERMS IS

09:44:16 11   IMPORTANT TO ARISTA'S DEFENSES. AND I'M NOT GOING TO KEEP THAT

09:44:20 12   OUT, I HAVE BEEN CLEAR, IT'S THIS MONIKER OF INDUSTRY STANDARD

09:44:25 13   THAT HAS CONCERNED ME.

09:44:27 14   NOW DR. BLACK CANNOT INTRODUCE THESE MANUALS. YOU WANTED

09:44:33 15   TO -- IF YOU WANTED TO TAKE JUDICIAL NOTICE, YOU COULD HAVE

09:44:36 16   DONE IT THAT WAY. THEY ARE NOT COMING IN THROUGH DR. BLACK.

09:44:40 17   WE WENT THROUGH THIS WHEN ARISTA MADE THE OBJECTIONS TO

09:44:43 18   INTERNAL DOCUMENTS THAT COULD NOT COME IN THAT WAY.

09:44:47 19   HE CAN GIVE OPINIONS, HE CAN SAY HE LOOKED AT THEM, HE CAN

09:44:53 20   EVEN GIVE A LAUNDRY LIST OF THE ONES HE LOOKED AT, BUT THE

09:44:56 21   MANUALS AREN'T COMING IN.

09:44:58 22   MR. WONG: YOUR HONOR, COULD I ADDRESS THAT POINT,

09:45:00 23   PLEASE?

09:45:01 24   THE COURT: SURE.

09:45:02 25   MR. WONG: SO THERE WAS A STIPULATION THAT THE

09:45:03 1   PARTIES ENTERED INTO EARLIER, AND THIS WAS LAST MONTH, AND THIS

09:45:03 2   WAS ACTUALLY CISCO'S SUGGESTION WHERE THEY SAID THAT DOCUMENTS

09:45:06 3   PRODUCED BY EITHER PARTY WOULD BE PRESUMED AUTHENTIC, ABSENT A

09:45:10 4   GOOD FAITH OBJECTION.

09:45:11 5   AND BECAUSE OF THAT, WE SAW DR. ALMEROTH INTRODUCE

09:45:15 6   DOCUMENTS FOR WHICH HE COULD NOT AUTHENTICATE, AND WE DIDN'T

09:45:18 7   OBJECT THAT BECAUSE OF THIS AGREEMENT.

09:45:19 8   THE COURT: OKAY. BUT THOSE AREN'T BEFORE ME.

09:45:22 9   MR. NELSON TOOK THOSE OFF THE TABLE.

09:45:23 10   MR. WONG: NO, DR. ALMEROTH DID INTRODUCE --

09:45:26 11   THE COURT: NO, NO, NO. MR. NELSON STARTED, AND HIS

09:45:29 12   BRIEF SAYS THAT CISCO IS NOT OBJECTING TO THE FOUR MANUALS THAT

09:45:32 13   SATISFY THE REQUIREMENTS OF THE STIPULATION.

09:45:35 14   MR. NELSON: CORRECT.

09:45:36 15   THE COURT: AND SO THOSE MAY COME IN BECAUSE YOU'VE

09:45:38 16   AGREED.

09:45:39 17   MR. WONG: NOW THE REMAINING DOCUMENTS, YOUR HONOR,

09:45:41 18   THESE ARE USER MANUALS THAT CAME DIRECTLY FROM THE PUBLIC

09:45:46 19   WEBSITE OF THESE VENDORS AND THEY ARE SELF-AUTHENTICATING ON

09:45:49 20   THEIR FACE. THEY HAVE THE VENDOR'S NAME AND THE DATES AND

09:45:53 21   THESE ARE A THOUSAND PAGE DOCUMENTS.

09:45:55 22   SO THERE'S NO GOOD FAITH OBJECTION TO THESE AS BEING

09:45:59 23   INAUTHENTIC. AND WE NEVER HEARD ANY COMPLAINT FROM CISCO, WHO

09:46:02 24   HAS HAD THESE DOCUMENTS SINCE FACT DISCOVERY, THAT ANY OF THESE

09:46:05 25   ARE NOT AUTHENTIC.

09:46:06   1   THE COURT: SO LET ME ASK YOU THIS AS WELL, I DON'T

09:46:10   2   EVEN KNOW WHAT -- THIS DOESN'T RELATE TO ALL ISSUES. THESE

09:46:14   3   MANUALS POST-DATE CISCO'S CLI.

09:46:17   4   SO I DON'T KNOW WHAT -- WHEN YOU SAY INDUSTRY STANDARD,

09:46:20   5   YOU ARE USING SOME OF THEM FOR LIMITED PURPOSES. IT'S GOT TO

09:46:25   6   BE YOUR FAIR USE DEFENSE, IT'S GOT TO BE YOUR ABANDONMENT, BUT

09:46:29   7   IT CAN'T BE A KNOCK ON ORIGINALITY.

09:46:33   8   MR. WONG: BUT YOUR HONOR, THAT'S NOT --

09:46:34   9   THE COURT: AND I DON'T KNOW, I MEAN, FRANKLY, AS I

09:46:37 10   READ ALL THESE DEPOSITIONS WHERE THE THIRD PARTIES WERE TALKING

09:46:39 11   ABOUT THEIR VIEW OF INDUSTRY STANDARD, I AGAIN, WAS DISORIENTED

09:46:44 12   ABOUT TIME.

09:46:45 13   MR. WONG: MAYBE I CAN CLEAR THIS UP, YOUR HONOR.

09:46:48 14   SO THE ANALYSIS OF COMMON USAGE OR WE SAW USAGE BY OTHER

09:46:53 15   VENDORS OF THE CLI ELEMENTS, THAT GOES TO FAIR USE AND MARKET

09:46:57 16   HARM AND DAMAGES, AND YOU KNOW DR. BLACK IS NOT SAYING, I DON'T

09:47:01 17   THINK ANYONE IS SAYING THAT THAT GOES TO THE ORIGINALITY OF,

09:47:05 18   YOU KNOW, THESE CLI COMMANDS.

09:47:07 19   THE COURT: ALL RIGHT.

09:47:08 20   MR. WONG: AND I THINK WE MADE THAT CLEAR, EVEN

09:47:10 21   EARLIER IN THE CASE AT SUMMARY JUDGEMENT.

09:47:13 22   THE COURT: WELL, MAYBE TO ME, BUT I'M REALLY

09:47:16 23   ACTUALLY PUTTING MYSELF IN THE SHOES OF EIGHT JURORS WHO WILL

09:47:20 24   BE LISTENING TO THIS. AND YOU'VE TALKED ABOUT INDUSTRY

09:47:24 25   STANDARD AT THE TIME OF CISCO'S CLI THAT THEY TOOK FROM

09:47:29 1   INDUSTRY STANDARDS. AND THAT'S VERY IMPORTANT EVIDENCE.

09:47:32 2   MR. WONG: THAT'S CORRECT.

09:47:33 3   THE COURT: AND THIS IS SEPARATE.

09:47:34 4   MR. WONG: THAT'S CORRECT.

09:47:35 5   THE COURT: AND I ACTUALLY -- I MEAN, I DON'T HAVE --

09:47:38 6   I DON'T KNOW THE DATES OF ANY OF THESE MANUALS, BUT I PRESUME

09:47:41 7   THEY SPAN A PERIOD OF YEARS, BUT I DON'T KNOW IF ANY OF THEM

09:47:45 8   PREDATE THE CISCO CLI.

09:47:47 9   MR. WONG: THEY DON'T. AND IT WILL BE CLEAR THAT

09:47:49 10   THEY DON'T PREDATE THE 1986 FOUNDING OF CISCO.

09:47:54 11   THE COURT: AND SO ARE YOU -- I MEAN, IT SEEMS TO ME

09:47:57 12   THAT YOU ARE -- I DON'T -- YOU ARE TRYING TO GET THEM IN

09:48:00 13   THROUGH DR. BLACK AS -- HOW IS HE AUTHENTICATING THEM? I GOT

09:48:05 14   THEM OFF THE WEB?

09:48:07 15   MR. WONG: NO, NO. JUST TO GIVE SOME EXAMPLES,

09:48:09 16   YOUR HONOR.

09:48:09 17   ON THIS LIST THAT THEY'VE OBJECTED TO, THEY HAVE THREE

09:48:13 18   DATA SHEETS THAT MR. CATO'S, THE DELL WITNESS, ACTUALLY

09:48:16 19   AUTHENTICATED AT HIS DEPOSITION.

09:48:19 20   THE COURT: OKAY.

09:48:19 21   MR. WONG: SO THOSE SHOULD COME IN.

09:48:22 22   SOME OF THE SUMMARY EXHIBITS THAT THEY ARE TRYING TO KEEP

09:48:24 23   OUT --

09:48:24 24   THE COURT: YEAH, AND YOU HAVE TO EXPLAIN TO ME WHAT

09:48:27 25   KIND OF SUMMARY EXHIBITS THEY ARE.

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09:48:28   1              MR. WONG:  SURE.  I WILL GIVE YOU AN EXAMPLE.

09:48:30   2          RANGES 26 -- I'M SORRY, 5626 THROUGH 5643, WHAT THOSE ARE,

09:48:37   3   YOUR HONOR, ARE FOR EVERY VENDOR THAT DR. BLACK LOOKED AT, HE

09:48:42   4   FOUND THE FULL COMMAND.  SO THIS IS PLUS ARGUMENTS AND

09:48:45   5   EVERYTHING ELSE IN THE MANUALS, AND PROVIDED A CITATION IT A

09:48:48   6   MANUAL.

09:48:50   7              THE COURT:  OKAY.

09:48:50   8              MR. WONG:  NOW FOR SEVERAL OF THEM, AND I WILL LIST

09:48:53   9    THEM OUT, SO FOR THE BROCADE ANALYSIS, 5630, EVERY SINGLE

09:48:59  10    MANUAL CITED IN THERE IS A MANUAL PRODUCED DIRECTLY FROM

09:49:03  11    BROCADE FOR WHICH CISCO HAS BASICALLY ACCEPTED THAT THOSE ARE

09:49:06  12    BOTH BUSINESS RECORDS AND AUTHENTIC.

09:49:09  13              THE COURT:  OKAY.  SO THIS IS NOW A SUMMARY OF

09:49:11  14    MATERIALS CONTAINED --

09:49:12  15              MR. WONG:  WITHIN THOSE EXHIBITS.

09:49:14  16              THE COURT:  THAT SEEMS REASONABLE.

09:49:15  17              MR. WONG:  FOR DELL IT IS ALSO ENTIRELY FROM THE

09:49:18  18    SUBPOENA TO DELL, EXCEPT FOR ONE DOCUMENT THAT CISCO PRODUCED,

09:49:22  19    IT WAS A DELL MANUAL THAT CAME FROM CISCO'S FILES.

09:49:25  20              THE COURT:  OKAY.

09:49:25  21              MR. WONG:  SO I THINK THAT ONE, THAT'S 5631.  I THINK

09:49:28  22    THAT IS A TRUE SUMMARY EXHIBIT BECAUSE IT'S BASED UPON

09:49:33  23    DOCUMENTS THAT ARE AUTHENTIC, AND PRODUCED BY DELL ITSELF.

09:49:38  24          FOR 5633, THAT'S A SUMMARY OF COMMANDS FROM THE EDGECORE

09:49:42  25    VENDOR.  THOSE WERE PRODUCED ENTIRELY UNDER A SUBPOENA FROM
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09:49:47 1   EDGECORE, AND THE ONLY DOCUMENTS CITED IN THAT SUMMARY ARE

09:49:51 2   DOCUMENTS THAT HAVE THE EDGECORE BATES NUMBER.

09:49:53 3   SO THOSE --

09:49:54 4   THE COURT: SO I'M NOT EVEN SEEING THOSE DOCUMENTS

09:49:56 5   LISTED AS OBJECTED TO. I'M SORRY THAT I'M --

09:50:02 6   MR. WONG: THEY ARE PART OF THE RANGE, YOUR HONOR, IN

09:50:03 7   THE FOOTNOTE OF THEIR BRIEF. FOOTNOTE 2. THEY HAVE A RANGE OF

09:50:08 8   THEIR FIRST AND HERE'S 5626 AND 5643.

09:50:12 9   THE COURT: I SEE THAT. YES, YES.

09:50:14 10   MR. WONG: FOR EXTREME, PROCTER NETWORKS, EVERY

09:50:17 11   SINGLE MANUAL CITED IN THAT SUMMARY EXHIBIT WAS PRODUCED UNDER

09:50:20 12   A SUBPOENA BY EXTREME.

09:50:22 13   AND PER THE STIPULATION, CISCO AGREED THAT THOSE ARE

09:50:24 14   AUTHENTIC AND ALSO BUSINESS RECORDS.

09:50:27 15   FOR THE FOUNDRY SUMMARY EXHIBIT, THOSE ALL WERE PRODUCED

09:50:31 16   DIRECTLY BY BROCADE WHO PURCHASED FOUNDRY. BROCADE GAVE A

09:50:36 17   DECLARATION AUTHENTICATING THEM. ALL OF THOSE CITED THERE ARE

09:50:39 18   AUTHENTIC UNDER THE STIPULATION AND BUSINESS RECORDS, SO THOSE

09:50:42 19   WOULD BE ADMISSIBLE.

09:50:43 20   I CAN DO THE SAME THING FOR JUNIPER. AND I CAN DO THE

09:50:47 21   SAME THING FOR PROCKET BECAUSE MR. LI, YESTERDAY, AUTHENTICATED

09:50:51 22   THOSE.

09:50:51 23   THE COURT: WELL, MR. NELSON, LET'S START WITH

09:50:53 24   SUMMARIES THAT COME FROM MANUALS YOU'VE AGREED ARE ADMISSIBLE.

09:50:57 25   MR. NELSON: I DON'T HAVE ANY PROBLEM WITH THAT,

09:50:59   1   YOUR HONOR.

09:50:59   2   THE COURT: OKAY. THEN THOSE ARE IN.

09:51:01   3   MR. NELSON: THAT'S NOT WHAT I'M TALKING ABOUT.

09:51:03   4   THE COURT: OKAY.

09:51:03   5   MR. NELSON: I'M TALKING ABOUT ALL OF THE OTHER

09:51:05   6   THINGS THAT ARE OFFERED HERE.

09:51:06   7   THE COURT: SO WHAT REASONABLE OBJECTION DO YOU HAVE

09:51:08   8   TO THE AUTHENTICITY OF THE MANUALS?

09:51:12   9   MR. NELSON: THE REASONABLE OBJECTION I HAVE IS

09:51:13   10   REMEMBER, THEIR WHOLE CASES, WE GOT TWO DIFFERENT INDUSTRY

09:51:17   11   STANDARDS, AND I WILL PICK UP THE LATER ONE, THE ONE THAT'S

09:51:20   12   RELATED TO FAIR USE, NOT THEIR ORIGINALITY DEFENSE. SO THAT

09:51:23   13   ENTIRE THING IS BASED ON WHAT PEOPLE ARE ACTUALLY DOING.

09:51:27   14   WHAT APPEARS IN THE MANUALS IS NOT NECESSARILY WHAT PEOPLE

09:51:33   15   ARE DOING. THEY'VE MADE THAT CLEAR THROUGHOUT THE CASE.

09:51:35   16   AND IN FACT, THINK ABOUT THIS YOUR HONOR, WHAT IS WE HEARD

09:51:38   17   AND SAW YESTERDAY --

09:51:39   18   THE COURT: WHAT IS IN THEIR MANUAL IS NOT

09:51:42   19   NECESSARILY WHAT THEY ARE DOING?

09:51:43   20   MR. NELSON: MEANING IT'S NOT NECESSARILY WHAT'S

09:51:45   21   IMPLEMENTED IN THE PRODUCT. AND IT'S CERTAINLY NOT THE

09:51:48   22   TOTALITY OF WHAT'S IMPLEMENTED TO THE PRODUCT. SO WE DON'T

09:51:51   23   HAVE ANY TESTIMONY TO THAT EFFECT.

09:51:52   24   THE OTHER THING IS WE DON'T KNOW WHICH PRODUCTS THEY ARE

09:51:55   25   TALKING ABOUT OR WHETHER -- THE REPRESENTATION BEING MADE BY

09:51:58 1   DR. BLACK, IS THIS APPLIES TO ALL THE PRODUCTS THAT -- SO HE

09:52:02 2   WANTS TO SAY OH, I GOT A FEW DELL MANUALS FOR ONE OF THE

09:52:05 3   PRODUCTS AND THEREFORE DELL IS FOLLOWING WHAT THEY TERM TO BE

09:52:09 4   THE INDUSTRY STANDARD, WHATEVER THAT MIGHT BE.

09:52:10 5   THE COURT: WELL, THAT'S JUST A MATTER OF -- THAT'S

09:52:14 6   CROSS-EXAMINATION OF DR. BLACK'S TESTIMONY.

09:52:17 7   MR. NELSON: UNDERSTOOD, YOUR HONOR. I UNDERSTAND

09:52:20 8   THAT, ALTHOUGH THINK ABOUT WHAT WE ARE DOING HERE.

09:52:23 9   SO WE HAVE THEIR OWN STATEMENTS FOR THE FOUR -- THERE'S

09:52:30 10   BASICALLY, IN TERMS OF THE SUMMARY EXHIBIT, HE WANTS TO OFFER

09:52:32 11   TO THE JURY, AND I FORGET THE NUMBER, I WILL GET THAT FOR

09:52:35 12   YOUR HONOR, I THINK IT'S 9041, BUT REGARDLESS, SO HE HAS A LIST

09:52:40 13   OF COMMANDS, OVERLAPPING COMMANDS, AND PICKS BROCADE AND FOUR

09:52:46 14   OF THE JUNIPER OS-E, AND WE ALREADY HEARD THE CONFUSION WITH

09:52:50 15   JUNIPER OS, VERSUS OS-E, AND DELL AND EXTREME; RIGHT.

09:52:58 16   AND WE KNOW FROM THEIR OWN DOCUMENTATION THAT THEY

09:53:01 17   BELIEVE, MEANING ARISTA, BELIEVES AS OF 2010, THAT THOSE PEOPLE

09:53:07 18   DO NOT IMPLEMENT WHAT THEY CALL THE INDUSTRY STANDARD CLI.

09:53:11 19   SO DR. BLACK IS SIMPLY BRUSHING EVERYTHING ASIDE, RELYING

09:53:14 20   ON A FEW UNAUTHENTICATED MANUALS.

09:53:18 21   IN TERMS OF THE ONES PRODUCED TO SUBPOENA, I DON'T HAVE

09:53:21 22   ANY PROBLEM SEPARATING THOSE THINGS OUT. BUT INCLUDING IN THE

09:53:24 23   SUMMARY EXHIBIT THE ONES THAT THEY SIMPLY GOT OFF THE WEB AT

09:53:30 24   HIS DEPOSITION TESTIMONY WAS THAT THE LAWYERS HANDED THESE TO

09:53:32 25   HIM, RIGHT. THAT WOULD BE LIKE ME GOING TO WIKIPEDIA AND

09:53:35 1   SAYING HEY, THIS IS AN ESTABLISHED FACT. AND WE ALL KNOW

09:53:39 2   WIKIPEDIA IS NOT SO RELIABLE, RIGHT?

09:53:42 3   THE COURT: WELL, BUT YOU'RE SUGGESTING THAT THERE'S

09:53:46 4   DOUBT THAT A PRODUCT MANUAL THAT IS POSTED ONLINE IS

09:53:51 5   INAUTHENTIC, THAT IT'S FAKE.

09:53:53 6   MR. NELSON: WELL, THERE'S NO TESTIMONY THAT WHAT

09:53:56 7   WEBSITES -- DR. BLACK DOESN'T EVEN KNOW WHAT WEBSITES THEY CAME

09:54:00 8   FROM.

09:54:00 9   THE COURT: WELL, I APPRECIATE THAT.

09:54:01 10   MR. NELSON: THEY COULD COME FROM ANYTHING. AND WHO

09:54:03 11   KNOWS WHO POSTED THESE THINGS, WHETHER THEY COME FROM

09:54:09 12   PARTICULAR PRODUCTS THAT WERE ACTUALLY OUT THERE IN THE

09:54:11 13   MARKETPLACE, WHAT THOSE PRODUCTS IMPLEMENTED.

09:54:11 14   THE COURT: THE MANUALS DON'T TELL YOU THAT?

09:54:14 15   MR. NELSON: NO, NO, NO --

09:54:15 16   THE COURT: I MEAN --

09:54:16 17   MR. WONG: HE SAID A LOT. CAN I SAY SOMETHING?

09:54:19 18   THE COURT: IT'S HARD TO IMAGINE, HERE'S A MANUAL AND

09:54:21 19   I'M NOT GOING TO TELL YOU WHAT PRODUCTS IT WORKS ON.

09:54:24 20   MR. NELSON: I'M NOT SAYING WHAT PRODUCTS, I'M SAYING

09:54:26 21   DR. BLACK DOESN'T PROVIDE THAT INFORMATION. DR. BLACK DOESN'T

09:54:29 22   EVER MAKE THAT CORRELATION. HE SIMPLY SAYS, THIS IS RELEVANT

09:54:33 23   TO DELL. DELL IS INDUSTRY STANDARD, RIGHT?

09:54:35 24   MR. WONG: I DISAGREE.

09:54:36 25   MR. NELSON: WELL, PLEASE, LET ME FINISH.

09:54:38 1   AND THE OTHER POINT HERE, YOUR HONOR, IS THINK ABOUT IT,

09:54:45 2   THEY ARE SAYING IMPLEMENT THE CISCO CLI, THAT'S INDUSTRY

09:54:49 3   STANDARD; RIGHT? THAT'S WHAT THEY'VE SAID IN THEIR DOCUMENTS,

09:54:52 4   THAT'S THEIR EXCUSE FOR HAVING TAKEN IT; RIGHT? I THINK IT'S

09:54:57 5   ALL STRAIGHTFORWARD.

09:54:58 6   EVEN DR. BLACK'S SUMMARY SHOWS THAT THE COMMANDS THAT THEY

09:55:01 7   USE DON'T OVERLAP WITH THE COMMANDS THAT THESE OTHER PEOPLE

09:55:05 8   USE.

09:55:05 9   SO THEY ARE TRYING TO SAY INDUSTRY STANDARD IS WHATEVER

09:55:08 10   YOU CHOOSE --

09:55:09 11   THE COURT: WELL, DR. BLACK IS TRYING TO DRAW A

09:55:11 12   COMPARISON BETWEEN THESE OTHER VENDORS AND CISCO, NOT THESE

09:55:16 13   OTHER VENDORS AND ARISTA; RIGHT?

09:55:18 14   MR. WONG: THAT'S RIGHT, YOUR HONOR.

09:55:19 15   AND SORRY, MR. NELSON, I NEED TO JUMP IN BECAUSE YOU HAVE

09:55:21 16   BEEN SPEAKING FOR FIVE MINUTES.

09:55:23 17   FIRST OF ALL, THIS NOTION THAT THE MANUALS HAVE NO

09:55:25 18   CORRELATION TO WHAT THE PRODUCTS DO, DR. ALMEROTH'S ANALYSIS IS

09:55:28 19   BASED UPON ARISTA'S MANUALS.

09:55:30 20   THE COURT: YEAH.

09:55:30 21   MR. WONG: SO I DON'T UNDERSTAND HOW THAT WOULD APPLY

09:55:33 22   THERE.

09:55:33 23   SECOND OF ALL, YOU KNOW, DR. BLACK, CONSISTENT WITH THE

09:55:36 24   COURT'S DAUBERT ORDER, IS SIMPLY GOING TO TALK ABOUT WHICH

09:55:40 25   FEATURES ARE DOCUMENTED AND USED IN THESE MANUALS.

09:55:43   1   AND DR. BLACK HAS USED THESE VENDORS'S EQUIPMENT BEFORE,

09:55:47   2   IT'S NOT CORRECT THAT DR. BLACK HAS NO IDEA WHERE THESE CAME

09:55:51   3   FROM; IN FACT, THE DEPOSITION TESTIMONY CITED ALL HE SAID WAS

09:55:55   4   THAT "THE LAWYERS PROVIDED ME WITH SOME MANUALS," WHICH OF

09:55:59   5   COURSE IS TRUE BECAUSE THE LAWYERS ARE THE ONE THAT SUBPOENAED

09:56:01   6   THIRD PARTIES AND GOT THE DOCUMENTS FROM THE THIRD PARTIES.

09:56:04   7   THE COURT: COULD I SEE A REPRESENTATIVE DOCUMENT?

09:56:07   8   MR. WONG: SURE. LIKE A MANUAL?

09:56:08   9   THE COURT: A MANUAL THAT'S NOT STIPULATED TO THAT'S

09:56:11 10   COMING DIRECTLY FROM THE VENDOR.

09:56:13 11   MR. WONG: I DIDN'T PRINT OUT THE FULL THOUSAND

09:56:16 12   PAGE --

09:56:16 13   THE COURT: THANK YOU, THAT'S GREAT.

09:56:18 14   MR. WONG: I WILL TRY TO FIND ONE HERE THAT'S

09:56:21 15   REPRESENTATIVE, YOUR HONOR. JUST BEAR WITH ME.

09:56:23 16   THE COURT: AND THEN DO I HAVE A SUMMARY DOCUMENT I

09:56:25 17   CAN LOOK AT?

09:56:28 18   MR. WONG: YES, HERE IS ONE. THIS IS ONLY THE FIRST

09:56:30 19   TEN PAGES, THIS DOCUMENT IS LARGE.

09:56:33 20   THE COURT: THIS IS A MANUAL?

09:56:34 21   MR. WONG: YES. THIS IS AN AVAYA MANUAL THAT THEY

09:56:40 22   CLAIM IS BEING FALSIFIED, I GUESS. 7302.

09:56:55 23   AND YOUR HONOR, I WILL HAND UP A SUMMARY THAT ALSO SHOWS

09:56:59 24   WHAT I'M REFERRING TO.

09:57:02 25   THE COURT: SO I'M JUST LOOKING, YOU'VE GIVEN ME THIS

09:57:05   1   DOCUMENT, IT TOOK ME ABOUT THREE SECONDS TO FIND ON PAGE 7.

09:57:09   2   "THE FOLLOWING SECTIONS DETAIL WHAT'S NEW IN AVAYA

09:57:13   3   ETHERNET ROUTING SWITCH 8800-8600, USER INTERFACE

09:57:22   4   FUNDAMENTALS."

09:57:23   5   PRETTY SPECIFIC, MR. NELSON, WE AREN'T DOUBTING WHAT THIS

09:57:26   6   PERTAINS TO.

09:57:27   7   MR. NELSON: I UNDERSTAND THAT, BUT DR. BLACK DOESN'T

09:57:30   8   BASE HIS OPINION ON ANY OF THAT. HE'S TRYING TO TAKE ONE

09:57:33   9   MANUAL FOR ONE PRODUCT AT ONE POINT IN TIME AND SAYING,

09:57:36   10   THEREFORE, AVAYA IMPLEMENTS THIS ACROSS ITS PRODUCT LINE.

09:57:40   11   THE COURT: WELL, MAYBE THAT STATEMENT IS A LITTLE

09:57:42   12   BIT TOO BIG.

09:57:43   13   MR. WONG: AND I DON'T THINK DR. BLACK IS ACTUALLY

09:57:45   14   SAYING THAT, YOUR HONOR.

09:57:46   15   THE COURT: BUT I DON'T THINK THAT'S WHAT'S

09:57:49   16   NECESSARY.

09:57:49   17   I HAD UNDERSTOOD THAT THE FAIR USE DEFENSE WAS SIMPLY TO

09:57:51   18   SHOW THAT AT SOME POINT, MANY VENDORS HAVE USED IT AND HERE'S

09:57:56   19   EVIDENCE THAT THEY HAVE, NOT THAT IT WAS LASTING AND ENDURING.

09:57:59   20   MR. WONG: THAT'S CORRECT, YOUR HONOR.

09:58:02   21   SO YOUR HONOR, THIS IS ONE OF THE SUMMARY EXHIBITS WHERE

09:58:04   22   DR. BLACK LOOKED AT MANUALS PRODUCED BY THE VENDORS OR THIRD

09:58:08   23   PARTY VENDOR MANUALS.

09:58:10   24   BUT IN THIS CASE, THIS IS A BROCADE -- THESE ARE

09:58:13   25   BROCADE-PRODUCED MANUALS, YOU CAN TELL THAT FROM THE BATES

09:58:16 1   NUMBER. AND HE EXTRACTED THE FULL COMMAND AS THEY APPEAR IN

09:58:19 2   THE MANUALS AND PUT THEM THERE.

09:58:20 3   AND AS YOU CAN SEE, THEY ARE A LITTLE BIT MORE COMPLEX

09:58:24 4   THAN THE SHORTHAND COMMAND EXPRESSIONS.

09:58:26 5   THE COURT: SO DO YOU HAVE A SERIES OF SUMMARY

09:58:30 6   DOCUMENTS LIKE THE ONE YOU HANDED UP TO ME WHICH IS CALLED

09:58:34 7   AMENDED APPENDIX H-F?

09:58:37 8   MR. WONG: YES.

09:58:37 9   THE COURT: AND OF COURSE, THIS ISN'T THE RIGHT ONE,

09:58:41 10   AND THE USER MANUAL FROM WHICH THE SUMMARY WAS CREATED?

09:58:45 11   MR. WONG: SO WE WOULD BE ADMITTING THE SUMMARY

09:58:47 12   WITHOUT ADMITTING THE UNDERLYING USER MANUAL --

09:58:50 13   THE COURT: YOU PRODUCED IT?

09:58:51 14   MR. WONG: IT'S PRODUCED, THAT'S THE BATES NUMBER ON

09:58:53 15   THE RIGHT-HAND SIDE. AND THESE WERE PRODUCED BY BROCADE.

09:58:56 16   THE COURT: OKAY. GOT IT.

09:58:56 17   MR. WONG: AND WE HAVE SIMILAR ONES, YOUR HONOR, FOR

09:58:58 18   DELL --

09:58:59 19   THE COURT: AND WHY ARE YOU INTRODUCING ALL THE

09:59:02 20   MANUALS?

09:59:03 21   MR. WONG: WE ARE NOT INTRODUCING ALL THE MANUALS, WE

09:59:05 22   ARE JUST INTRODUCING ONE OR TWO.

09:59:06 23   THE COURT: SO THAT THEY UNDERSTAND HOW THIS GOT

09:59:08 24   MADE?

09:59:09 25   MR. WONG: THAT IS CORRECT.

09:59:09 1   THE COURT: WELL, THAT'S MERCIFUL. AND HOW MANY

09:59:14 2   SUMMARIES ARE THERE?

09:59:15 3   MR. WONG: I DON'T THINK WE WOULD INTRODUCE ALL OF

09:59:18 4   THEM, WE WOULD INTRODUCE A SELECTION OF THEM. SO PROBABLY,

09:59:20 5   IT'S UP TO MR. FERRALL.

09:59:22 6   MR. FERRALL: THREE TO FIVE, OBVIOUSLY OUR TIME IS I

09:59:25 7   LIMITED.

09:59:25 8   THE COURT: OKAY. LET ME GIVE THESE BACK TO YOU, YOU

09:59:27 9   TOOK THEM OUT OF YOUR FOLDER, YOU WILL WANT THEM BACK.

09:59:31 10   ALL RIGHT. I'M SATISFIED THAT THE MANUALS THAT DR. BLACK

09:59:35 11   HAS REFERRED TO HAVE SUFFICIENT INDICIA OF RELIABILITY TO BE

09:59:40 12   INDEPENDENTLY ADMISSIBLE. AND CERTAINLY, I MEAN WITNESSES

09:59:45 13   COULD COME IN, HE RELIED UPON THEM, THEY -- THE FACT THAT THEY

09:59:49 14   RESIDE ON THE WEB, THEY HAVE THEIR OWN INDEPENDENT INDICIS OF

09:59:56 15   THAT RELIABILITY.

09:59:56 16   THE SUMMARY DOCUMENT APPEARS TO BE SIMPLE AND

09:59:59 17   STRAIGHTFORWARD AND BASED UPON DOCUMENTS THAT WERE DISCLOSED,

10:00:02 18   AND I WILL ALLOW THESE SUMMARY DOCUMENTS TO COME IN THROUGH

10:00:05 19   DR. BLACK'S TESTIMONY.

10:00:07 20   MR. WONG: MR. NELSON, WHILE WE ARE AT IT, I DON'T

10:00:12 21   UNDERSTAND WHY YOU ARE OBJECTING TO AN IEEE STANDARD AND AN

10:00:17 22   OSPF RFC?

10:00:18 23   MR. NELSON: I'M NOT OBJECTING TO IT.

10:00:20 24   THE COURT: IS THERE ANYTHING ELSE IN CISCO'S

10:00:22 25   OBJECTIONS WE NEED TO DEAL WITH THIS MORNING?

10:00:24 1   MR. NELSON: WELL, I THINK THERE ARE A COUPLE OF

10:00:25 2   THINGS.

10:00:25 3   BASED UPON WHAT YOU JUST SAID, THESE SUMMARY EXHIBITS, YOU

10:00:29 4   DON'T INTEND TO USE THESE SUMMARY EXHIBITS? THIS IS A

10:00:32 5   DEMONSTRATIVE, NOT A SUMMARY OF ANYTHING.

10:00:34 6   THE COURT: I DON'T KNOW WHAT YOU ARE REFERRING TO.

10:00:36 7   MR. NELSON: OKAY. SO YOU SHOULD HAVE A COPY, IT

10:00:38 8   WOULD BE --

10:00:40 9   THE COURT: I HAVE NOTHING, REMEMBER. UNTIL YOU HAND

10:00:42 10   THEM TO ME.

10:00:43 11   MR. NELSON: I THOUGHT SHE DID HAND THEM UP, I

10:00:46 12   APOLOGIZE, YOUR HONOR.

10:00:47 13   MR. WONG: YOUR HONOR, THESE ARE SUMMARIES BASED UPON

10:00:48 14   THAT -- BUT THE LIST THAT I GAVE TO YOU OF EXTREME COMMANDS, OR

10:00:52 15   I GUESS THAT WAS FOUNDRY COMMANDS THAT YOU LOOKED AT. SO THE

10:00:58 16   SUMMARY I JUST SHOWED YOU WHICH HAS ALL THE ADMISSIBLE MANUALS

10:01:02 17   WHERE EACH OF THESE THINGS COME FROM, WHAT WE CREATED FOR THE

10:01:05 18   FOUR, I GUESS THE FIVE VENDORS ON THAT SLIDE, IS JUST SHOWING

10:01:11 19   WHICH COMMANDS ARE WANT SUPPORTED BY THOSE VENDORS.

10:01:15 20   SO YOU SAW THE SUMMARY EXHIBIT THEY HANDED UP THAT SHOWED

10:01:18 21   THAT FOUNDRY SUPPORTED ABOUT 150 COMMANDS. WHAT THIS EXHIBIT

10:01:24 22   THAT MR. NELSON IS TALKING ABOUT --

10:01:28 23   MR. NELSON: I THINK IT'S 9067.

10:01:31 24   MR. WONG: 9061.

10:01:32 25   MR. NELSON: 9061.

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10:01:34 1   MR. WONG: WHAT THAT DOES IS SIMPLY SUMMARIZE THAT TO

10:01:38 2   SHOW THAT --

10:01:39 3   THE COURT: IS THIS A DEMONSTRATIVE?

10:01:41 4   MR. WONG: I BELIEVE WE WOULD LIKE TO INTRODUCE IT

10:01:43 5   INTO EVIDENCE, YOUR HONOR, BECAUSE IT IS BASED UPON THE

10:01:45 6   UNDERLYING SUMMARY EXHIBIT WHICH ITSELF IS ADMISSIBLE.

10:01:47 7   MR. NELSON: IT'S A SUMMARY OF A SUMMARY?

10:01:49 8   MR. WONG: THAT IS CORRECT.

10:01:51 9   THE COURT: SO THIS THEN IS A COMPOSITE OF THE

10:01:53 10   SUMMARIES, WOULD THAT BE CORRECT?

10:01:55 11   MR. WONG: THAT IS CORRECT.

10:01:56 12   MR. NELSON: NO, IT WOULD BE AN EXCERPT OF CERTAIN OF

10:02:00 13   THE SUMMARIES.

10:02:01 14   THE COURT: WELL, IT LOOKS LIKE IT'S TELLING ME THAT

10:02:03 15   THE AAA ACCOUNTING COMMAND LINE IS IN BROCADE, DELL, JUNIPER

10:02:10 16   AND HP.

10:02:11 17   MR. WONG: THAT'S CORRECT.

10:02:12 18   THE COURT: AND THE COLOR CODE.

10:02:13 19   MR. NELSON: WITH RESPECT TO THE FIRST ONE, YES,

10:02:15 20   THAT'S CORRECT.

10:02:16 21   THE COURT: AND THERE'S A SUMMARY THAT SUPPORTS EACH

10:02:18 22   OF THOSE COLOR CODES.

10:02:20 23   MR. WONG: THAT'S CORRECT.

10:02:20 24   MR. NELSON: WELL, I DON'T KNOW IF THEY INTEND, HE

10:02:23 25   SAID THEY WERE GOING TO ENTER A SUBSET OF THOSE.

10:02:25 1   SO THERE'S TWO PROBLEMS WITH THIS SUMMARY, YOUR HONOR.

10:02:28 2   SO THEY HAD OBJECTED THAT WE DIDN'T PUT THE COMPLETE

10:02:34 3   COMMAND TO KEEP OUT THAT, YOU RECALL THE SUMMARY EXHIBIT THAT

10:02:38 4   WE OFFERED, AND NOW THEY ARE OFFERING A SUMMARY EXHIBIT THAT

10:02:42 5   MR. VAN NEST SAID THEY WOULD NOT DO.

10:02:44 6   THE COURT: WELL, THERE HAS TO BE A COMPLETE COMMAND

10:02:46 7   BECAUSE I'VE EXCLUDED THAT PREVIOUSLY.

10:02:48 8   MR. WONG: AND YOUR HONOR, THE RESPONSE TO THAT IS

10:02:50 9   THAT NOW THERE ARE.

10:02:51 10   SO WE DID AGREE TO PUT IN EXHIBIT 1 TO THE COMPLAINT INTO

10:02:55 11 EVIDENCE, THAT'S GOING TO BE IN THE JURY ROOM. THERE'S ALSO

10:02:57 12 GOING TO BE MR. REMAKER'S MODIFIED SUMMARY EXHIBIT WHICH ALSO

10:03:03 13 JUST LISTS THE SHORTHAND COMMAND, THAT'S GOING TO BE IN THE

10:03:07 14 JURY ROOM.

10:03:09 15   MR. FERRALL: WELL, I JUST THINK IF WE ARE JUST

10:03:11 16 TALKING ABOUT THIS CHART, YOUR HONOR, AND IF IT MAKES THINGS --

10:03:19 17 OUR ABILITY TO START THE TRIAL NOW, WE CAN JUST USE IT AS A

10:03:22 18 DEMONSTRATIVE.

10:03:23 19   THE COURT: MAYBE THAT MAKES THE MOST SENSE.

10:03:24 20   MR. WONG: OKAY.

10:03:25 21   MR. NELSON: SO THEN IN TERMS OF ALL THE SUMMARY --

10:03:27 22 THE OTHER SUMMARIES, BECAUSE THEY HAVE A SERIES OF THESE.

10:03:30 23   THE COURT: THEY CAN COME IN.

10:03:32 24   MR. NELSON: I'M TALKING -- THE ONES YOU SAY HAVE THE

10:03:34 25 COMPLETE COMMANDS; RIGHT? THE -- OR EXCUSE ME, THE ONES THAT

10:03:37 1   THEY REPRESENTED TO YOU HAVE THE COMPLETE COMMAND STRUCTURE, AT

10:03:41 2   LEAST WHAT THEY REPRESENT TO BE THE COMPLETE, BUT ALL OF THE

10:03:43 3   OTHER SUMMARIES THEY HAVE THAT DON'T, THOSE BASED ON THAT

10:03:47 4   REPRESENTATION --

10:03:48 5   THE COURT: WELL, IT SOUNDS LIKE IF IT'S NOT A

10:03:50 6   COMPLETE COMMAND REFERENCE, THEN I'VE ALREADY EXCLUDED IT ON

10:03:53 7   YOUR SIDE, SO I'VE GOT TO EXCLUDE IT FOR ARISTA.

10:03:56 8   MR. NELSON: UNDERSTOOD, YOUR HONOR.

10:03:56 9   THAT'S ALL I WAS -- AND THERE'S ONE OTHER OBJECTION WE GOT

10:04:00 10   YESTERDAY BECAUSE WE MODIFIED THE EXHIBIT PURSUANT TO

10:04:05 11   YOUR HONOR'S REQUEST.

10:04:06 12   THE ONE THAT WE OFFERED TO TAKE OUT THE ARISTA SIDE, YOU

10:04:10 13   WILL RECALL THE ONE I TALKED ABOUT WITH DR. ALMEROTH, SO YOU

10:04:12 14   DON'T HAVE THIS SIDE-BY-SIDE COMPARISON. IT BREAKS THOSE

10:04:17 15   COMMANDS OUT BY USER INTERFACE WHICH IS -- AND SO WE TOOK THAT

10:04:21 16   OUT.

10:04:22 17   WE GOT AN OBJECTION SAYING THAT SPECIFIC FORMAT WASN'T

10:04:26 18   DISCLOSED DURING DISCOVERY, IT WAS ONLY DISCLOSED IN HIS

10:04:29 19   REPORT.

10:04:29 20   THE COURT: WELL, THAT'S SOMETHING THAT CHANGED

10:04:31 21   WHILE -- YOU DID THAT AT MY REQUEST?

10:04:33 22   MR. NELSON: CORRECT, CORRECT.

10:04:34 23   AND I MEAN, AS LONG AS -- BECAUSE NONE OF THESE WERE

10:04:37 24   DISCLOSED AND NONE OF THESE COMMANDS, NONE OF THIS ARGUMENT

10:04:40 25   ISSUE.

10:04:40   1   THE COURT: WELL, IF IT'S A DEMONSTRATIVE, IT'S NOT

10:04:43   2   GOING TO BE AN EXHIBIT.

10:04:44   3   MR. NELSON: RIGHT.

10:04:44   4   BUT IN TERMS OF THAT SUMMARY TO TAKE THAT OUT, I ASSUME

10:04:48   5   THAT WOULD BE FINE BECAUSE WE ARE NOT PUTTING THEM SIDE BY

10:04:50   6   SIDE.

10:04:50   7   THE COURT: THAT'S RIGHT.

10:04:51   8   MR. NELSON: SO WE WILL GIVE IT A NUMBER AND WE CAN

10:04:53   9   OFFER THAT INTO EVIDENCE.

10:04:55 10   MR. WONG: I'M NOT EVEN SURE WHAT YOU --

10:04:58 11   THE COURT: MS. SULLIVAN, DID YOU HAVE SOMETHING?

10:05:00 12   MS. SULLIVAN: YES, YOUR HONOR. TWO LAST ITEMS FOR

10:05:00 13   CISCO. VERY BRIEFLY.

10:05:00 14   THE COURT: OF COURSE.

10:05:06 15   MS. SULLIVAN: KATHLEEN SULLIVAN FOR CISCO.

10:05:07 16   YOUR HONOR, YESTERDAY YOU INVITED CISCO TO SUBMIT A

10:05:10 17   PROPOSED CURATIVE JURY INSTRUCTION," TO MAKE SURE THIS JURY

10:05:15 18   DOESN'T THINK THAT BECAUSE CISCO'S CLI BECAME POPULAR THAT THAT

10:05:18 19   ALONE CAUSED IT TO BE GIVEN AWAY."

10:05:20 20   YOUR HONOR, WE HAVE DONE SO, AND WE WOULD LIKE YOUR

10:05:22 21   GUIDANCE ON HOW YOU WOULD LIKE TO PROCEED ON IT. WE'VE HANDED

10:05:26 22   IT TO ARISTA'S COUNSEL, WE ARE PREPARED TO FILE IT ON THE

10:05:28 23   DOCKET IF THE COURT WOULD LIKE US TO.

10:05:30 24   THE COURT: SURE.

10:05:31 25   MS. SULLIVAN: WE ARE PREPARED TO HAND IT UP TO YOU

10:05:34 1   FOR YOUR REVIEW, AND YOU CAN JUST CONSIDER HOW YOU WOULD LIKE

10:05:36 2   TO HANDLE IT TO HAVE IT READY WHEN YOU NEED IT.

10:05:41 3   THE COURT: THANK YOU FOR DOING THAT.

10:05:42 4   I WANT TO KNOW IF THERE ARE ANY OBJECTIONS TO IT, SO WE

10:05:46 5   WILL LET ARISTA TAKE SOME TIME TO LOOK AT IT.

10:05:48 6   AND I WOULD ASK FOR THE PROPOUNDING PARTY TO LET ME KNOW

10:05:51 7   WHEN YOU WOULD LIKE IT READ.

10:05:51 8   MS. SULLIVAN: OKAY, YOUR HONOR.

10:05:51 9   THE COURT: I DON'T ACTUALLY KNOW WHEN THE EVIDENCE

10:05:54 10   IS COMING IN. AND I READ IT USUALLY IN ADVANCE OF THE EVIDENCE

10:05:56 11   THAT IT WOULD PERTAIN TO.

10:05:58 12   MS. SULLIVAN: THAT'S FINE, YOUR HONOR.

10:06:00 13   CAN I JUST ASK IF YOU WOULD LIKE US TO FILE IT FORMALLY ON

10:06:04 14   THE DOCKET?

10:06:04 15   THE COURT: I'M NOT GOING TO CONSIDER IT YET.

10:06:07 16   MR. VAN NEST: I DON'T THINK THIS IS PROPER. I THINK

10:06:07 17   IT'S HIGHLY IMPROPER.

10:06:08 18   WE WERE EXPECTING TO GET A PROPOSAL FROM THEM. WE GOT

10:06:11 19   NOTHING. THIS WAS -- I DIDN'T EVEN HAVE IT THIS MORNING.

10:06:14 20   THE COURT: I'M NOT GOING TO DEAL WITH IT NOW.

10:06:16 21   MR. VAN NEST: FINE.

10:06:17 22   MS. SULLIVAN: WE ARE NOT GOING TO DEAL WITH IT NOW,

10:06:19 23   WE ARE ASKING FOR GUIDANCE.

10:06:21 24   MR. VAN NEST: I TOLD THEM THIS MORNING SINCE THIS

10:06:24 25   PERTAINED TO THE KASTEN DEPOSITION, I WOULD NOT PLAY THAT

10:06:27   1   TODAY, AND TAKE IT OFF THE TABLE AND WORK ON IT, AND WHEN IT'S

10:06:29   2   APPROPRIATE, WE WILL TRY TO PRESENT SOMETHING THAT'S AGREED TO.

10:06:31   3   THE COURT: GOOD. AND IF MS. SULLIVAN WANTS TO WAIT

10:06:34   4   TO POST IT UNTIL YOU'VE HAD A CHANCE TO LOOK AT IT, THAT WOULD

10:06:37   5   BE FINE.

10:06:38   6   MR. VAN NEST: THANK YOU.

10:06:38   7   THE COURT: YOU CAN BRING IT TO ME WHEN YOU'VE BOTH

10:06:41   8   HAD A CHANCE TO CONSIDER IT.

10:06:43   9   MS. SULLIVAN: THANK YOU, YOUR HONOR.

10:06:43 10   ONE LAST THING, YOUR HONOR.

10:06:45 11   YESTERDAY AT THE END OF THE ARGUMENT SESSION, YOUR HONOR

10:06:47 12   SAID THAT ONE OF THE MAIN ISSUES THERE WAS, IN THE JURY

10:06:50 13   INSTRUCTIONS COLLOQUY, WAS WHETHER THE COMPARISON WAS TO WORK

10:06:54 14   AS A WHOLE. AND YOU SAID THAT YOU ARE GOING TO HAVE AN ORDER

10:06:58 15   THAT'S JUST ABOUT READY TO GO OUT.

10:07:00 16   THE COURT: THAT'S RIGHT.

10:07:01 17   MS. SULLIVAN: YOUR HONOR, CISCO WOULD LIKE TO,

10:07:02 18   RESPECTFULLY, UPDATE THE COURT ON THE PROGRESS OF INSTRUCTIONS

10:07:07 19   39 AND 41.

10:07:08 20   THE COURT: OH, OKAY.

10:07:09 21   MS. SULLIVAN: CISCO'S COUNSEL AND ARISTA'S COUNSEL

10:07:11 22   ARE IN ONGOING EXCHANGES ABOUT THOSE INSTRUCTIONS, AND WE ARE

10:07:15 23   PREPARED TO SUBMIT THE PRODUCT OF THAT DISCUSSION TO YOUR HONOR

10:07:19 24   TONIGHT.

10:07:19 25   THE COURT: OH, GOOD.

10:07:20 1   MS. SULLIVAN: IF WE CONTINUE TO DISPUTE THE

10:07:23 2   INSTRUCTIONS, WE WILL HAVE ARGUMENT IN SUPPORT OF THE COMPETING

10:07:25 3   INSTRUCTIONS THAT WILL GO DIRECTLY TO THE ISSUE YOUR HONOR

10:07:28 4   ALLUDED TO.

10:07:29 5   THE COURT: SO YOU WOULD LIKE ME TO WAIT?

10:07:31 6   MS. SULLIVAN: THAT'S WHAT WE WOULD LIKE, YOUR HONOR.

10:07:33 7   WE WOULD LIKE YOU TO WAIT TO ISSUE ANY ORDER UNTIL YOU

10:07:36 8   HAVE THE BENEFIT OF BRIEFING AND ARGUMENT ON THIS MATTER THAT

10:07:39 9   REMAINS DISPUTED.

10:07:39 10   THE COURT: THAT'S FINE. AND I'M GLAD TO DO THAT.

10:07:41 11   MS. SULLIVAN: THANK YOU, YOUR HONOR.

10:07:42 12   THE COURT: ALL RIGHT. LET ME HAND BACK THE BINDER

10:07:44 13   OF EXHIBITS.

10:07:51 14   ALL RIGHT. AND SO I THINK THAT TAKES CARE OF EVERYTHING

10:07:53 15   FOR TODAY.

10:07:57 16   MR. VAN NEST: WILL WE TAKE A SHORT BREAK BEFORE THE

10:07:59 17   JURY COMES IN, I JUST NEED TO --

10:08:01 18   THE COURT: YES, WE CAN CERTAINLY DO THAT.

10:08:18 19   (RECESS FROM 10:08 A.M. UNTIL 10:13 A.M.)

10:13:21 20   (JURY IN AT 10:13 A.M.)

10:13:22 21   THE COURT: WE ARE BACK ON THE RECORD. ALL COUNSEL

10:13:24 22   AND PARTIES ARE PRESENT. OUR JURORS ARE HERE.

10:13:27 23   GOOD MORNING, EVERYONE.

10:13:28 24   ALL RIGHT. LET'S SEE, I THINK WE ARE READY TO CALL A NEW

10:13:30 25   WITNESS, MR. VAN NEST; IS THAT CORRECT?

10:13:32 1   MR. VAN NEST: WE ARE, YOUR HONOR.

10:13:33 2   AND AT THIS TIME ARISTA NETWORKS WOULD CALL JAYSHREE

10:13:36 3 ULLAL.

10:13:37 4   THE COURT: ALL RIGHT.

10:13:37 5   AND MS. ULLAL IS ALREADY IN THE COURTROOM.

10:13:39 6   MS. ULLAL IF YOU WOULD COME FORWARD TO THE WITNESS STAND,

10:13:42 7 PLEASE, AND STAND TO BE SWORN.

10:13:48 8   **(DEFENDANT'S WITNESS, JAYSHREE ULLAL, WAS SWORN.)**

10:13:48 9   THE WITNESS: YES.

10:14:02 10   THE CLERK: IF YOU WOULD PLEASE STATE YOUR NAME AND

10:14:07 11 SPELL YOUR LAST NAME FOR THE RECORD.

10:14:11 12   THE WITNESS: MY NAME IS JAYSHREE ULLAL. U-L-L-A-L.

10:14:23 13   MR. VAN NEST: GOOD MORNING, YOUR HONOR. GOOD

10:14:25 14 MORNING, EVERYONE.

10:14:22 15   **DIRECT EXAMINATION**

10:14:23 16 BY MR. VAN NEST:

10:14:26 17 Q.   GOOD MORNING, MS. ULLAL.

10:14:27 18 A.   GOOD MORNING, COUNSELOR.

10:14:31 19 Q.   PLEASE INTRODUCE YOURSELF TO THE JURY.

10:14:33 20 A.   MY NAME IS JAYSHREE ULLAL. I AM THE CEO AND PRESIDENT OF

10:14:38 21 ARISTA NETWORKS. I HAVE BEEN MARRIED FOR 32 YEARS. I HAVE TWO

10:14:42 22 LOVELY DAUGHTERS IN THEIR TWENTIES. AND I JUST RECENTLY BECAME

10:14:46 23 A MOTHER-IN-LAW TOO, SO I HAVE A NEW SON-IN-LAW.

10:14:49 24 Q.   CAN YOU MOVE THAT MIC JUST A LITTLE BIT CLOSER?

10:14:53 25   THANK YOU.

10:14:55 1   CAN YOU TELL OUR JURORS A LITTLE BIT ABOUT YOUR PERSONAL

10:14:57 2   BACKGROUND?

10:14:58 3   A.   OKAY. I WAS BORN IN LONDON. AND THEN I WAS RAISED FOR --

10:15:03 4   UNTIL HIGH SCHOOL, IN INDIA, IN NEW DELHI. AND I CAME HERE FOR

10:15:08 5   MY FURTHER EDUCATION TO SAN FRANCISCO STATE. I'M TRAINED IN

10:15:11 6   ENGINEERING, WHERE I GOT MY DEGREE IN ELECTRICAL ENGINEERING.

10:15:15 7   AS A FOREIGN STUDENT, BY MONEY WAS TIGHT, SO I DID A

10:15:18 8   NUMBER OF JOBS. I WORKED IN THE LIBRARY IN COLLEGE, I WORKED

10:15:21 9   AT WALTER ROBERTS FOR MANY YEARS. I WORKED AT PG&E WHERE I

10:15:26 10   READ THROUGH MANUALS. AND THEN I WENT ON TO PURSUE WHILE I WAS

10:15:31 11   WORKING ON MY MASTER'S IN ENGINEERING MANAGEMENT AS WELL.

10:15:35 12   Q.   AND WHERE DID YOU RECEIVE YOUR MASTER'S?

10:15:37 13   A.   SANTA CLARA UNIVERSITY, VERY CLOSE BY HERE.

10:15:42 14   Q.   AND MS. ULLAL, WHAT IS THAT BROUGHT YOU FROM NEW DELHI TO

10:15:45 15   THE BAY AREA TO FINISH YOUR EDUCATION?

10:15:47 16   A.   WELL, MY FAMILY WAS MOVING HERE AND I DECIDED TO PURSUE MY

10:15:50 17   EDUCATION. ORIGINALLY WAS PLANNING TO MOVE BACK, BUT THEN I

10:15:54 18   STAYED ON TO WORK.

10:15:55 19   Q.   AND TELL US A LITTLE BIT ABOUT YOUR WORK CAREER AFTER

10:15:58 20   GETTING YOUR MASTER'S IN ENGINEERING?

10:16:00 21   A.   I BEGAN MY WORK HERE BACK WHEN SILICON VALLEY WAS THE

10:16:06 22   SILICON VALLEY. MY FIRST JOB WAS IN SILICON IN MICROCHIPS, A

10:16:10 23   COMPANY CALLED FAIRCHILD SEMICONDUCTOR. AND I WAS BUILDING

10:16:15 24   CHIPS BACK THEN. I WAS AN ENGINEER, PRODUCT ENGINEER.

10:16:19 25   I WENT ON TO AMD, ADVANCED MICRODEVICES, WHERE I CONTINUED

10:16:24 1   TO DO ENGINEERING, BUT THAT'S WHERE I MADE A SHIFT TO PRODUCT

10:16:28 2   PLANNING AND MARKETING. AND AFTER THAT I WAS AT THE COMPANY

10:16:32 3   WHICH WAS PART OF TANDEM COMPUTERS WHICH IS NOW COMPAQ AND HP,

10:16:36 4   AND THAT'S WHERE I REALLY DUG INTO THE SYSTEMS ASPECT OF

10:16:38 5   NETWORKING AND WENT ON TO HAVE A LONG YEAR IN NETWORKING.

10:16:41 6   Q.   AND WHEN YOU SAY SYSTEMS ASPECT OF NETWORKING, TELL THE

10:16:45 7   JURORS WHAT YOU MEAN.

10:16:46 8   A.   SO INITIALLY I WORKED ON CHIPS, AND THEN I WORKED ON

10:16:50 9   INTERNET NETWORKING OR BRIDGES, THEY WERE CALLED. THEY WERE

10:16:53 10   THE PRECURSOR TO SWITCHES, IN A WAY, THEY WERE THE FIRST

10:16:56 11   SWITCHES IN THE INDUSTRY BASED ON A PROTOCOL AT THAT TIME

10:17:01 12   CALLED XNN, IT'S BASED ON PTP.

10:17:05 13   Q.   WHAT IS CRESCENDO?

10:17:06 14   A.   IF YOU'RE IN THE SILICON VALLEY, YOU ALWAYS WANT TO TRY

10:17:11 15   YOUR HAND AT A STARTUP. MOST STARTUPS FAIL, BUT I ALWAYS

10:17:16 16   WANTED TO TRY ONE. I WENT TO A VERY YOUNG COMPANY CALLED

10:17:19 17   CRESCENDO COMMUNICATIONS, IT WAS ABOUT 40 PEOPLE, AND I

10:17:23 18   JOINED -- THAT WAS IN 1991 OR '92. AND CRESCENDO WENT ON TO BE

10:17:30 19   ACQUIRED BY CISCO SYSTEMS.

10:17:31 20   Q.   AND DID YOU THEN GO ALONG WITH CRESCENDO TO CISCO?

10:17:38 21   A.   I DID. AS PART OF THE ACQUISITION WHICH WAS CISCO'S FIRST

10:17:41 22   ACQUISITION IN 1993, I BECAME PART OF CISCO IN SEPTEMBER OF

10:17:46 23   1993.

10:17:47 24   Q.   WHAT TITLE DID YOU HAVE WHEN YOU GOT TO CISCO, MS. ULLAL?

10:17:51 25   A.   I WAS DIRECTOR OF LAN SWITCHING. UNTIL THEN, CISCO WAS A

10:17:56 1   ROUTER COMPANY, AND THEY WERE JUST ABOUT THE SIZE OF ARISTA IS

10:17:59 2   NOW, MAYBE A LITTLE SMALLER. AND THIS WAS THEIR FIRST ENTRY

10:18:03 3   INTO SWITCHING.

10:18:04 4   Q.   WHAT WAS THE PRODUCT THAT CRESCENDO MADE?

10:18:07 5   A.   CRESCENDO MADE HIGH SPEED NETWORKING PRODUCTS THAT ARE

10:18:12 6   CALLED FTPI, THEY RAN AT 100 MEGABITS PER SECOND WHICH SEEMED

10:18:17 7   LIKE A BIG DEAL BACK THEN, NOW IT'S VERY SMALL SPEEDS.

10:18:21 8   AND WE WERE LITERALLY TRYING SOMETHING THAT HAD NEVER BEEN

10:18:27 9   DONE BEFORE WHICH WAS DRIVE IT OVER COPPER RATHER THAN

10:18:29 10   FIBEROPTIC. IN THE PAST, YOU COULD ONLY DO IT OVER

10:18:33 11   FIBEROPTICS.

10:18:34 12   Q.   DID CISCO CONTINUE TO SELL THAT PRODUCT THAT YOU DEVELOPED

10:18:36 13   AT CRESCENDO AFTER THE ACQUISITION?

10:18:39 14   A.   THEY DID. BUT THEN WE WENT ON TO INVEST AND BUILD OUR

10:18:44 15   SWITCHING PRODUCT, WHICH WAS THE SECOND PRODUCT.

10:18:46 16   Q.   OKAY. AND WHAT WAS THAT PRODUCT AND DID IT BECOME

10:18:49 17   SUCCESSFUL AT CISCTO?

10:18:50 18   A.   YES. THAT WAS OUR FIRST PRODUCT. IT WAS CALLED THE

10:18:53 19   CATALYST 1200. IT WAS A VERY SUCCESSFUL PRODUCT. IT WENT FROM

10:18:58 20   ZERO TO MULTI MILLIONS. AND THEN WE WENT ON TO BUILD SEVERAL

10:19:00 21   CATALYST SWITCHES, THE 5000, 4000, 6000.

10:19:02 22   Q.   WHAT YEAR DID YOU JOIN CISCO, MS. ULLAL?

10:19:05 23   A.   WELL, AS I SAID, I CAME TO THE ACQUISITION IN SEPTEMBER OF

10:19:09 24   1993.

10:19:09 25   Q.   AND WOULD YOU JUST GIVE OUR JURORS KIND OF A BRIEF RECAP

10:19:13 1   OF THE POSITIONS YOU HELD AND THE CAREER YOU HAD AT CISCO.

10:19:15 2   HOW LONG WERE YOU THERE AND WHAT TITLES AND POSITIONS DID

10:19:18 3   YOU HOLD?

10:19:18 4   A.   YEAH.   I WAS THERE 15 YEARS, GIVE OR TAKE A FEW.   AND

10:19:22 5   INITIALLY THE FIRST SEVEN YEARS, I WAS PRIMARILY IN THE LAN

10:19:27 6   SWITCHING, THE CATALYST FAMILY.   IT WAS ONE OF THE FASTEST

10:19:30 7   GROWING BUSINESSES FOR CISCO, AND THE BUSINESS GREW VERY

10:19:34 8   RAPIDLY FROM ZERO TO A FEW HUNDRED MILLION TO MULTIPLE

10:19:38 9   BILLIONS.

10:19:38 10   SO IN THE FIRST SEVEN YEARS IT WENT FROM ZERO TO OVER

10:19:42 11 $5 MILLION.

10:19:44 12   Q.   THEN WHAT HAPPENED?

10:19:45 13   A.   THEN I TOOK -- I WANTED TO LEAVE CISCO, AND JOHN CHAMBERS

10:19:52 14   CONVINCED ME NOT TO LEAVE, BUT INSTEAD, TAKE A LEAVE OF

10:19:56 15   ABSENCE, WHICH I DID.

10:19:56 16   Q.   FOLLOWING THE LEAVE, WHAT HAPPENED?

10:19:58 17   A.   I TOOK A LEAVE TO TRY AND BE A GOOD MOM AND TRY AND

10:20:02 18   BALANCE MY CAREER, BUT JOHN CHAMBERS CALLED ME BACK AND HE

10:20:06 19   ASKED ME TO COME BACK.

10:20:07 20   AND THE COMPANY HAD GONE FROM BEING EXTREMELY SUCCESSFUL,

10:20:10 21   HALF A TRILLION DOLLAR EVALUATION BACK IN 2000, TO DOING LESS

10:20:16 22   WELL BY THE END OF 2000.

10:20:20 23   THERE IS A COMPANY IN PARTICULAR, JUNIPER NETWORKS THAT

10:20:24 24   WAS ATTACKING CISCO'S CORE ROUTER MARKET, AND CISCO WAS VERY

10:20:29 25   ALARMED, THEY WERE USING A SIGNIFICANT SHARE, AND JUNIPER HAD

10:20:34 1   GONE FROM ZERO TO 20 PERCENT MARKET SHARE IN LITERALLY SIX

10:20:37 2   QUARTERS.

10:20:38 3   SO JOHN ASKED ME TO COME AND HELP WITH THAT.

10:20:41 4   Q.   AND DID YOU DO THAT?

10:20:42 5   A.   INITIALLY I WAS -- I DIDN'T WANT TO, BUT THEN LOYALTY TOOK

10:20:47 6   THE BETTER OF ME AND I DECIDED IF I WAS THERE IN CISCO'S GOOD

10:20:52 7   TIMES, I SHOULD BE HELPING IN THEIR TOUGH TIMES. SO I DID GO.

10:20:56 8   I ASKED THAT I HAVE NO TITLE OR RESPONSIBILITY, THAT I DO

10:20:59 9   THE JOB FOR PURELY THE BENEFIT OF HELPING CISCO. AND I

10:21:05 10   REVIEWED THAT AND I DID THAT FOR THE FIRST 90 TO 120 DAYS.

10:21:09 11   Q.   AND THEN HOW LONG DID YOU STAY FOLLOWING YOUR RETURN FROM

10:21:11 12   LEAVE?

10:21:12 13   A.   WELL, 90 TO 120 DAYS BECAME ANOTHER SEVEN YEARS. I DID A

10:21:18 14   NUMBER OF OTHER JOBS AS WELL FOR JOHN. I WENT ON TO BECOME THE

10:21:23 15   GENERAL MANAGER FOR THE OPTICAL BUSINESS, WHICH WAS A REAL

10:21:27 16   FIXER UPPER, AND THEN SECURITY, AND THEN FINALLY BEFORE I LEFT

10:21:31 17   I WAS IN CHARGE OF THE DATA CENTER SWITCHING GROUP.

10:21:34 18   Q.   LET'S TALK ABOUT THE DATA CENTER SWITCHING GROUP.

10:21:36 19   CAN YOU GIVE THE JURORS SOME IDEA OF THE SIZE OF YOUR

10:21:40 20   RESPONSIBILITY THERE, HOW MANY EMPLOYEES, HOW MUCH BUDGET

10:21:43 21   RESPONSIBILITY IN THAT PARTICULAR UNIT?

10:21:46 22   A.   YEAH. THE DATA CENTER SWITCHING GROUP WAS ROUGHLY ABOUT

10:21:53 23   3,000 PEOPLE. AND SO I'M GUESSING THE BUDGET, WE DIDN'T TALK

10:21:57 24   ABOUT P&L, IT WAS MAINLY ENGINEERING, PRODUCT FOCUSED BUDGET,

10:22:02 25   PROBABLY ABOUT 750 MILLION TO A BILLION. AND IT WAS A PRODUCT

10:22:06 1   THAT WE HAD A $10 BILLION BUSINESS.

10:22:09 2   Q.   WHAT WAS YOUR ROLE IN CONNECTION WITH THAT?

10:22:11 3   A.   I WAS THE SENIOR VICE PRESIDENT AND GENERAL MANAGER FOR

10:22:14 4   THE BUSINESS, DIRECTING THE BUSINESS AND PRODUCT DIRECTION.

10:22:17 5   Q.   DID YOU HAVE ANY RESPONSIBILITY IN THAT ROLE FOR THE

10:22:20 6   NEXUS 7K PRODUCT?

10:22:22 7   A.   YEAH, THE NEXUS 7K, THAT WAS THE FIRST DATA CENTER PRODUCT

10:22:28 8   CISCO INTRODUCED.

10:22:28 9   Q.   AND AT THE TIME YOU BECAME RESPONSIBLE FOR THAT UNIT, WAS

10:22:33 10   THE PRODUCT DEVELOPED, UNDEVELOPED, WHAT WAS THE STAGE OF THE

10:22:36 11   PRODUCT AT THAT TIME?

10:22:38 12   A.   THE NEXUS 7K WAS IN DEVELOPMENT WHEN I TOOK THE GROUP

10:22:45 13   OVER, BUT I CERTAINLY HAD A HAND IN SHAPING THE SOFTWARE AND

10:22:49 14   THE PLATFORM, AND WE BROUGHT IT OUT IN EARLY 2008.

10:22:53 15   Q.   WAS THAT A SUCCESSFUL PRODUCT FOR CISCO?

10:22:54 16   A.   I BELIEVE IT WAS. I THINK IT WAS A BILLION DOLLAR -- A

10:23:00 17   MULTI BILLION DOLLAR PRODUCT LINE.

10:23:01 18   Q.   WHEN DID YOU LEAVE CISCO?

10:23:04 19   A.   I LEFT IN MAY OF 2008.

10:23:07 20   Q.   AND WHY DID YOU LEAVE?

10:23:09 21   A.   WELL, LIKE I SAID, THAT WAS MY THIRD ATTEMPT AT LEAVING.

10:23:13 22   I HAD TRIED TO LEAVE TWICE BEFORE IN 2000 AND 2005. AND THEN

10:23:19 23   IN 2008.

10:23:21 24   AND YOU KNOW, I HAVE A LOT OF FOND MEMORIES OF MY 15 YEARS

10:23:25 25   AT CISCO, BUT I CONSIDER MYSELF AN ACCIDENTAL CORPORATE

10:23:29   1   EXECUTIVE.

10:23:31   2   THE COMPANY HAD GOTTEN VERY BIG, AND WHILE I ENJOYED IT, I

10:23:37   3   REALLY WANTED TO GO BACK TO SOMETHING SMALLER. I DIDN'T REALLY

10:23:39   4   KNOW WHAT I WOULD BE DOING, BUT I WAS CERTAIN I WANTED TO DO

10:23:41   5   SOMETHING SMALLER. SO I LEFT TO PURSUE MORE ENTREPRENEURIAL

10:23:45   6   ROUTES.

10:23:45   7   Q.   AND DID YOU LEAVE ON GOOD TERMS?

10:23:47   8   A.   VERY MUCH SO. I'M PERSONALLY VERY FOND OF JOHN CHAMBERS

10:23:53   9   AND I HAVE A LOT OF FRIENDS IN CISCO.

10:23:55   10   Q.   COULD YOU TAKE A LOOK IN YOUR BINDER AT EXHIBIT 6155,

10:24:01   11   MS. ULLAL, AND TELL US IF YOU RECOGNIZE IT?

10:24:05   12   A.   "CISCO THANKS JAYSHREE ULLAL FOR 15 YEARS OF INNOVATION."

10:24:19   13   Q.   YES. WAS THERE AN ANNOUNCEMENT AT CISCO AT THE TIME OF

10:24:22   14   YOU LEFT THE COMPANY?

10:24:23   15   A.   THAT WAS MAY 9, 2008.

10:24:25   16   Q.   IS THIS THAT ANNOUNCEMENT?

10:24:26   17   A.   THAT'S CORRECT. IT WAS POSTED ON WHAT'S CALLED THE CEC,

10:24:31   18   CISCO EMPLOYEE CONNECTION, THAT'S DISTRIBUTED TO ABOUT ALL THE

10:24:35   19   EMPLOYEES.

10:24:35   20   MR. VAN NEST: YOUR HONOR, I WOULD MOVE 6155 IN

10:24:38   21   EVIDENCE.

10:24:39   22   MR. PAK: NO OBJECTION YOUR HONOR.

10:24:40   23   THE COURT: IT WILL BE ADMITTED.

10:24:41   24   (DEFENDANT'S EXHIBIT 6155 WAS ADMITTED INTO EVIDENCE.)

10:24:41   25   BY MR. VAN NEST:

10:24:42 1   Q.   COULD WE JUST DISPLAY THE COVER SHEET. THAT'S GOOD.

10:24:45 2   LET'S DO THE TITLE AND THE FIRST PARAGRAPH, IF WE COULD.

10:24:47 3   "CISCO THANKS JAYSHREE ULLAL FOR 15 YEARS OF INNOVATION."

10:24:51 4   CAN YOU JUST EXPLAIN TO THE JURORS WHAT IS THE NATURE OF

10:24:54 5   THIS DOCUMENT WE ARE LOOKING AT? WHAT IS IT?

10:24:58 6   A.   IT'S AN ANNOUNCEMENT BASICALLY DESCRIBING MY 15 YEARS OF

10:25:02 7   HISTORY IN 15,000 OR LESS WORDS, I GUESS, AND THANKS ME FOR MY

10:25:08 8   CONTRIBUTIONS AND WISHING ME WELL AND WISHING ME FAREWELL.

10:25:13 9   Q.   THANK YOU.

10:25:14 10   NOW DID YOU CONTINUE TO STAY IN TOUCH WITH MR. CHAMBERS

10:25:17 11   AFTER YOU LEFT CISCO?

10:25:18 12   A.   I DID.

10:25:19 13   Q.   TELL THE JURY WHAT THE NATURE OF THAT CONTACT WAS OVER THE

10:25:22 14   YEARS, JUST IN A GENERAL SENSE.

10:25:25 15   A.   YEAH.

10:25:27 16   JOHN AND I STAYED IN TOUCH AND WE HAD A FONDNESS AND WE

10:25:32 17   HAVE A FONDNESS FOR EACH OTHER. WHEN MY ONLY LATE SISTER

10:25:36 18   PASSED AWAY AND WAS DYING OF CANCER, JOHN OF WAS KIND ENOUGH TO

10:25:40 19   INQUIRE THEN.

10:25:41 20   WE KEPT IN TOUCH WITH BIRTHDAY GREETINGS AND HOLIDAY

10:25:44 21   WISHES OFF AND ON FOR THE LAST EIGHT YEARS.

10:25:47 22   Q.   AND THAT'S CONTINUED ON SINCE THE TIME YOU LEFT CISCO?

10:25:49 23   A.   YES, IT HAS.

10:25:50 24   Q.   NOW ONCE YOU LEFT CISCO, DID YOU JOIN ARISTA RIGHT AWAY?

10:25:54 25   A.   NO, I DIDN'T.

10:25:55 1   Q.   TELL THE JURY HOW YOU ENDED UP AT ARISTA AND WHAT YOU DID

10:25:59 2   IN THE MEANTIME?

10:26:00 3   A.   I TOOK THE SUMMER OFF AND IN FACT, I HAD A FAIRLY STRONG

10:26:04 4   BELIEF THAT I WOULD NOT GO BACK TO A NETWORKING FIRM OR AT

10:26:08 5   LEAST A TRADITIONAL NETWORKING FIRM AGAIN.

10:26:11 6   SO I LOOKED AT STARTUPS IN THE ENERGY SPACE AND THE CLEAN

10:26:15 7   TECH SPACE AND THE SOCIAL NETWORKING SPACE, THINGS WHERE I

10:26:19 8   COULD APPLY MY SKILLS BUT THEY WEREN'T MY DIRECT SKILLS.

10:26:23 9   AND WHAT I FOUND WHEN I WAS STUDYING ALL OF THAT IS THAT

10:26:26 10   EVERY ONE OF THEM REQUIRED ALMOST A PH.D. IN THEIR TOPICS, AND

10:26:30 11   I DIDN'T REALLY BELIEVE IN IT, AND DIDN'T FULLY, YOU KNOW, GET

10:26:38 12   INVOLVED IN THAT OR FASCINATED ENOUGH.

10:26:41 13   AND THEN I RAN INTO ANDY BECHTOLSHEIM, MY GOOD FRIEND IN

10:26:46 14   THE LATE SUMMER.

10:26:47 15   Q.   AND WHAT DID MR. BECHTOLSHEIM ASK YOU TO DO?

10:26:49 16   A.   ANDY IS A GOOD FRIEND. I HAD KNOWN HIM 27 YEARS WHEN HE

10:26:53 17   WAS BACK AT SUN AND AMD WORKING ON THE CHIPS, AND HE EXPLAINED

10:26:58 18   WHAT ARISTA, AT THAT TIME NAMED ARASTRA, WAS DOING.

10:27:01 19   AND I WAS, FASCINATED, BECAUSE I DIDN'T WANT TO GET INTO

10:27:05 20   NETWORKING, BUT THE BEAUTY OF WHAT ARISTA WAS DOING, IT WAS A

10:27:08 21   BRAND-NEW SOFTWARE ARCHITECTURE THAT I HAD NEVER SEEN BEFORE.

10:27:11 22   IT JUST -- IT WAS SO THRILLING AND FASCINATING THAT, THAT

10:27:17 23   THE SOFTWARE ARCHITECTURE AND KEN AND THE FOUNDERS DEVELOPED,

10:27:21 24   AND THE FRIENDSHIP OF ANDY DREW ME TO THIS MORE THAN I

10:27:25 25   IMAGINED.

10:27:25 1   Q.   AND WHEN DID YOU JOIN ARISTA?

10:27:27 2   A.   I JOINED IN MID-SEPTEMBER.

10:27:28 3   Q.   AND WERE YOU THE CEO, THE CHIEF EXECUTIVE OFFICER THEN?

10:27:31 4   A.   YES, AND KEN DUDA WAS THE ACTING PRESIDENT. I BELIEVE I

10:27:34 5   WAS THE FIRST PRESIDENT AND CEO APPOINTED FOR THE COMPANY.

10:27:38 6   Q.   AND CAN YOU GIVE THE JURY JUST A GENERAL SENSE OF WHAT

10:27:41 7   RESPONSIBILITIES YOU HAVE AND YOU HAVE HAD AS THE CEO OF

10:27:44 8   ARISTA?

10:27:45 9   A.   YOU KNOW, BEING A CEO IS LIKE BEING A PARENT. YOU HAVE

10:27:50 10   RESPONSIBILITIES FOR EVERYTHING, BUT YOU DON'T KNOW ENOUGH

10:27:55 11   ABOUT EVERYTHING.

10:27:56 12   SO I REALLY BELIEVE IN HAVING A TEAM OF EXPERTS, SOME OF

10:27:59 13   WHOM YOU MIGHT HAVE MET, AND THE BEST AND THE BRIGHTEST IN ALL

10:28:03 14   MY CAREER AND ENGINEERING. I NEVER MET BRIGHTER AND LOWER SET

10:28:07 15   OF EGO OF ENGINEERING TEAM THAN I DID AT ARISTA.

10:28:10 16   AND SO I CONSIDER MYSELF A KEEPER OF THE VALUES THERE, THE

10:28:16 17   BEST OF BREED TECHNOLOGY, THE CUSTOMER INTIMACY, DELIVERING

10:28:21 18   HIGH QUALITY PRODUCTS, AND OF COURSE CLOUD NETWORKING WHICH I

10:28:24 19   REALLY BELIEVE WAS A VISION OF THE COMPANY.

10:28:25 20   Q.   OKAY. LET'S GET INTO THAT A LITTLE BIT.

10:28:28 21   SO AT THE TIME YOU JOINED IN 2008, WHAT WAS ARISTA'S

10:28:34 22   MISSION?

10:28:34 23   A.   THE MISSION, AND I'VE WRITTEN SEVERAL, PROBABLY 75 BLOGS

10:28:39 24   ON THIS TOPIC. THE MISSION WAS CLOUD NETWORKING. AND WE

10:28:42 25   WANTED, THE NETWORKING MARKET WAS VERY STAGNANT, IT HAD BEEN

10:28:47 1   DOMINATED BY ONE PLAYER. AND IT WAS A CLASSIC THREE-TIER

10:28:52 2   NETWORK, VERY MONOLITHIC SOFTWARE, AND THERE HADN'T BEEN MUCH

10:28:57 3   CHANGE.

10:28:58 4   SO WHAT ARISTA WAS SEEING IS THAT THERE WAS A NEW PARADIGM

10:29:04 5   OF SILICON, A NEW PARADIGM OF SOFTWARE. AND IN FACT, A NEW

10:29:08 6   CLASS IN PARADIGM OF CUSTOMERS THAT WANTED A CHANGE.

10:29:12 7   Q.   WHAT MARKET WERE YOU FOCUSSING ON?

10:29:15 8   A.   SO OUR GOAL WAS TO FOCUS ON THE CLOUD NETWORKING MARKET.

10:29:19 9   THIS WAS A NEW CLASS OF CLOUD PROVIDERS THAT WERE BUILDING

10:29:22 10   A NEW SCALE. YOU CAN THINK OF IT AS BASICALLY RATHER THAN

10:29:25 11   PUTTING NETWORKING IN THE DATA CENTER OR IN THE PREMISE, THEY

10:29:27 12   WERE TAKING IT INTO THE CLOUD, OFF THE PREMISE, SO THAT YOU CAN

10:29:33 13   CONSUME NETWORKING WITHOUT EACH COMPANY OR CUSTOMER HAVING TO

10:29:37 14   BUILD IT THEMSELVES.

10:29:37 15   Q.   WHAT WAS THE STATE -- WE'VE HEARD TESTIMONY FROM A NUMBER

10:29:40 16   OF WITNESSES ABOUT THE CLOUD MARKET, BUT LET'S GO BACK TO 2008.

10:29:44 17   WAS THERE A RECOGNIZED CLOUD MARKET THEN?

10:29:46 18   A.   NO, NOT AT ALL, IT WAS NEARLY A STATED VISION AND

10:29:49 19   DIRECTION ON MY PART AND MY COMPANY'S PART. BUT WE HAD A

10:29:55 20   BELIEF THAT THIS WAS A REALLY SIGNIFICANT MARKET. YOU HAD TO

10:29:59 21   LOOK REALLY AROUND THE BEND TO SEE IT, BECAUSE IT WASN'T THERE

10:30:01 22   AND IT WASN'T THERE FOR A LONG TIME. I THINK THE ACTUAL MARKET

10:30:04 23   FOR SOFTWARE-DRIVEN CLOUD MARKETING REALLY STARTED HAPPENING IN

10:30:10 24   2011, 2012.

10:30:11 25   Q.   AND BACK THEN IN '08, '09, WHAT DID YOU SEE AS THE KEY

10:30:15 1   FACTORS FOR SUCCESS IN THE CLOUD?

10:30:17 2   A.   YEAH.   THE FACTORS WERE VERY CLEAR.   FIRST OF ALL, IT WAS

10:30:21 3   SCALE.   YOU KNOW, WHEN YOU LOOK ON THE PREMISE YOU GENERALLY

10:30:24 4   THINK OF TEN SERVERS OR 100 SERVERS.   OVER HERE WE THOUGHT OF

10:30:29 5   SERVERS THAT ARE HUNDREDS OF THOUSANDS OR BILLION VIRTUAL

10:30:34 6   MACHINES OR TERABYTES OF STORAGE.   IT WAS LIKE AN ORDER OF

10:30:37 7   MAGNITUDE GREATER THAN ANYTHING YOU HAD NORMALLY SEEN BEFORE.

10:30:41 8   THE OTHER THING WAS HIGH AVAILABILITY.   THE DEFINITION OF

10:30:43 9   HIGH AVAILABILITY AT TRADITIONAL ENTERPRISE MARKET WAS IF ONE

10:30:47 10   FAILS, YOU SWAP OVER TO THE OTHER.   BUT THE HIGH AVAILABILITY

10:30:50 11   REQUIREMENTS IN THE CLOUD WERE MUCH MORE STRENUOUS.   YOU NEEDED

10:30:54 12   AUTOMATIC RECOVERY, YOU NEEDED INSTANT RECOVERY IN, YOU KNOW,

10:30:58 13   SUBSECONDS, NOT MINUTES.

10:31:01 14   THERE WAS ALSO LATENCY, HOW FAST CAN YOU MOVE A PACKET.

10:31:05 15   AND HOW QUICKLY CAN YOU GET THERE.   AND IN FACT, THAT'S THE

10:31:08 16   MARKET WE TURN TO BECAUSE THE CLOUD WASN'T THERE AND READY.

10:31:13 17   Q.   LET ME FOLLOW UP ON THAT A LITTLE BIT.   YOU MENTIONED

10:31:16 18   AVAILABILITY, IS THAT RELATED TO RELIABILITY?

10:31:18 19   A.   YEAH, VERY MUCH SO.   IT'S A FORM OF UPGRADING THE NETWORK

10:31:24 20   REALTIME.   YOU CAN THINK OF THIS LIKE CHRISTMAS TREE LIGHTS.

10:31:28 21   DURING THE HOLIDAY SEASON HERE, IF ONE LIGHT FAILS, THE ENTIRE

10:31:34 22   CHRISTMAS TREE LIGHT GOES ON AND THAT'S TYPICALLY HOW

10:31:37 23   NETWORKING WAS DONE.   IN THE ARISTA ARCHITECTURE, IF ONE LIGHT

10:31:40 24   FAILS FIRST, OF ALL THE REST OF THE LIGHTS STAY UP, ONLY THAT

10:31:43 25   ONE LIGHT FAILS.   BUT MORE IMPORTANTLY, WE EVEN HAVE MECHANISMS

10:31:48 1   TO COVER THAT LIGHT AND FIX THAT LIGHT AND REPAIR IT.

10:31:51 2   SO THAT KIND OF HIGH AVAILABILITY WASN'T SEEN BEFORE. IT

10:31:54 3   WAS AVAILABLE IN THE INDUSTRY AND UNIX SYSTEMS, BUT NEVER IN

10:31:58 4   NETWORKING.

10:31:59 5   Q.   YOU ALSO MENTIONED LOW LATENCY. IS THAT RELATED TO SPEED?

10:32:03 6   A.   YES, IT IS RELATED TO SPEED.

10:32:04 7   Q.   WHAT DOES IT MEAN?

10:32:06 8   A.   IT MEANS -- SORRY, I TALK TECH JARGON A BIT MUCH. IT

10:32:10 9   MEANS IF I SEND A PACKET OR I SEND INFORMATION FROM ONE

10:32:14 10   DESTINATION TO THE OTHER, TRADITIONALLY YOU CAN TAKE

10:32:18 11   FIVE-MINUTES OR YOU CAN TAKE FIVE SECONDS. IN THE CASE OF

10:32:22 12   ARISTA, WE TOOK 500 NANOSECONDS, LITERALLY 1/100TH AT A TIME.

10:32:27 13   AND HOW FAST YOU MOVE A PACKET, WE FOUND A VERY EXCITING

10:32:31 14   NEWS CASE IN ALGORITHMIC TRADING, HIGH FREQUENCY TRADERS.

10:32:36 15   WHEN YOU DO TRADING, EVERY NANOSECOND MATTERS. AND EVERY

10:32:39 16   NANOSECOND TRANSLATES TO SAVING DOLLARS FOR BANKERS AND

10:32:43 17   ALGORITHMIC TRADERS.

10:32:44 18   AND SO ALTHOUGH THE CLOUD DIDN'T HAPPEN RIGHT AWAY,

10:32:48 19   ARISTA'S IMMEDIATE SUCCESS BECAME THE HIGH FREQUENCY TRADING

10:32:51 20   AND FINANCIAL BANKS.

10:32:52 21   Q.   OKAY. SO TELL US HOW, GIVEN THOSE REQUIREMENTS, IN THE

10:32:55 22   CLOUD, HOW DID ARISTA GO ABOUT DESIGNING A SWITCH FOR THE

10:32:59 23   CLOUD, HOW DID YOU GO ABOUT DOING THAT?

10:33:01 24   A.   WE REALLY LOOKED AT THIS PROBLEM IN PROBABLY THREE PARTS.

10:33:08 25   THE FIRST WAS WHAT KIND OF SYSTEM ARCHITECTURE DO WE NEED.

10:33:13   1   AND IF YOU LOOKED AT TRADITIONAL ARCHITECTURES, THEY WERE ALL

10:33:15   2   CLOSED BOXES, BLACK BOXES. AND THEY WERE BUILT OUT OF CUSTOM

10:33:20   3   ASICS. AND ARISTA'S APPROACH WAS WE DON'T HAVE TO BUILD THE

10:33:24   4   ASICS, WE ARE GOING TO ADOPT MERCHANT SILICON.

10:33:27   5   WE CHOSE COMPANIES, INITIALLY STARTUP COMPANIES LIKE

10:33:33   6   FULCRUM AND BROADCOM. AND AT ANY GIVEN TIME WE FOUND THESE

10:33:36   7   SILICON WAS 1/5TH THE POWER, FIVE TIMES THE PERFORMANCE, AND

10:33:39   8   THREE TO FIVE TIMES THE POWER, THE DENSITY AS WELL.

10:33:42   9   Q.   NOW LET ME JUST STOP YOU THERE, MS. ULLAL. YOU USED A

10:33:45   10   COUPLE OF TERMS, ASICS AND MERCHANT SILICON.

10:33:49   11   TELL THE JURORS WHAT'S THE DIFFERENCE BETWEEN A CUSTOM

10:33:54   12   ASIC AND MERCHANT SILICON?

10:33:54   13   A.   A CUSTOM ASIC IS TYPICALLY ONE THAT'S BUILT IN A

10:33:57   14   PROPRIETARY FASHION BY THE COMPANY USING THEIR OWN DESIGN

10:34:02   15   METHODOLOGIES THAT ARE ALL PROCESSED.

10:34:03   16   A MERCHANT SILICON IS ONE THAT'S AVAILABLE FOR THE BROAD

10:34:07   17   MARKET, AND GENERALLY IT RELIES ON A MORE AGGRESSIVE

10:34:10   18   SEMICONDUCTOR PROCESS. THEY USE MORE AGGRESSIVE GEOMETRIES.

10:34:14   19   AND THEIR EXPERTISE IS SILICON, SO THEY DON'T VERTICALLY CREATE

10:34:20   20   THIS, THEY HORIZONTALLY PROVIDE CHIPS TO A VARIETY OF CUSTOMERS

10:34:22   21   IN THE MARKETPLACE.

10:34:23   22   Q.   YOU MENTIONED THREE FACTORS, YOU'VE COVERED THE SILICON;

10:34:27   23   WHAT WERE THE OTHER FACTORS THAT YOU --

10:34:30   24   A.   THE ONE THAT WAS FASCINATING AND VERY EXCITING AS I

10:34:33   25   MENTIONED BEFORE, IT WAS OUR EXTENSIBLE OPERATING SYSTEM, THE

10:34:36 1   EOS. AND I HAD NEVER SEEN ANYTHING LIKE THIS BEFORE.

10:34:39 2   AND IN NETWORKING, THERE'S PROBABLY ONLY BEEN THREE MAJOR

10:34:43 3   OPERATING SYSTEMS. AND I'VE TALKED ABOUT THIS IN BLOGS, IN THE

10:34:46 4   ENTERPRISE WORLD, I RESPECT CISCO A LOT FOR THEIR OPERATING

10:34:49 5   SYSTEMS, WHETHER IT'S IOS OR VARIOUS FLAVORS OF THAT. IN THE

10:34:53 6   SERVICE PROVIDER WORLD, IT'S BEEN JUNIPER. AND IN THE CLOUD

10:34:56 7   OPERATOR WORLD, IT'S BEEN ARISTA.

10:34:58 8   EOS WAS THE ONLY SYSTEM I SAW THAT HAD THE STATE DRIVEN

10:35:03 9   PROGRAMMABILITY THAT NO OTHER OPERATING SYSTEM HAS LIVED UP TO

10:35:06 10   TODAY.

10:35:07 11   Q.   AND WHY IS THAT IMPORTANT?

10:35:09 12   A.   IT'S VERY IMPORTANT BECAUSE, AS I SAID, IN THE CLOUD YOU

10:35:13 13   ARE DEALING WITH HUNDREDS AND THOUSANDS OF MACHINES. AND YOU

10:35:16 14   NEED THE FLEXIBILITY OF SCALING BETWEEN THOSE MACHINES AND THE

10:35:20 15   TRAFFIC WAS MOVING RAPIDLY FROM CLIENT-SERVER TO SERVER-SERVER.

10:35:26 16   SERVER TO SERVER, NOT SOUTH, BUT TO EAST-WEST.

10:35:29 17   AND WHAT I MEAN BY THAT IS IF YOU LOOK AT SOCIAL

10:35:32 18   NETWORKING LIKE FACEBOOK, BEHIND THAT USER EXPERIENCE, ARE

10:35:36 19   HUNDREDS AND THOUSANDS OF SERVERS THAT ARE IMPROVING YOUR

10:35:39 20   EXPERIENCE MAKING SURE YOU LOAD THE PAGES CORRECTLY, LOAD THE

10:35:43 21   PHOTOS CORRECTLY, LOAD YOUR LIKES AND DISLIKES CORRECTLY AND

10:35:46 22   ALL OF THAT TAKES A MASSIVE AMOUNT OF COMPUTING AND NETWORKING

10:35:50 23   POWER, BUT ALSO PROGRAMMABILITY.

10:35:52 24   YOU HAVE TO TUNE IT SO THAT THE RESPONSES CAN BE

10:35:58 25   CUSTOMIZED FOR EACH OF THE CASES.

10:36:00 1   Q.   AND WHY IS PROGRAMMABILITY AND CUSTOMIZABILITY IMPORTANT?

10:36:05 2   A.   BECAUSE THE REALITY IS THAT YOU CAN DELIVER SPEEDS AND

10:36:11 3   PERFORMANCE, BUT YOU ALSO HAVE TO BE AWARE OF THE TRAFFIC AND

10:36:14 4   HOW YOU CUSTOMIZE THAT FEED AND SPEED.

10:36:18 5   AND SO ARISTA'S REAL ADVANTAGE WAS OUR CUSTOMERS WERE ABLE

10:36:22 6   TO CUSTOMIZE OUR OPERATING SYSTEM, AND ALL THE OPERATING SYSTEM

10:36:26 7   LIKE IT WAS LITERALLY THEIRS, IT WAS OPEN, IT WASN'T A BLACK

10:36:29 8   BOX. THEY COULD WRITE SCRIPTS TO IT, THEY COULD DEVELOP

10:36:33 9   APPLICATIONS ON TOP OF IT. IT WAS AS MUCH THEIR OPERATING

10:36:36 10   SYSTEM AS IT WAS OURS.

10:36:37 11   Q.   CAN YOU TELL US HOW MANY LINES OF SOURCE CODE THERE ARE IN

10:36:42 12   THE EOS OPERATING SYSTEM?

10:36:44 13   A.   SURE. INITIALLY, IT WAS SMALL. WHEN I FIRST CAME IN, I

10:36:49 14   THINK IT WAS A MILLION OR A COUPLE OF MILLION LINES IN 2008.

10:36:53 15   AND TODAY, IT'S WELL OVER 10 MILLION LINES.

10:36:56 16   Q.   AND HOW MANY ENGINEERS WORK AT ARISTA TODAY?

10:37:00 17   A.   AGAIN, WHEN I JOINED, IT WAS PROBABLY 30 ENGINEERS, AND

10:37:04 18   TODAY I WOULD SAY OVER A THOUSAND.

10:37:06 19   Q.   AND HOW MANY EMPLOYEES -- THAT'S A THOUSAND ENGINEERS OUT

10:37:09 20   OF HOW MANY TOTAL EMPLOYEES IN THE COMPANY?

10:37:12 21   A.   THE TOTAL, APPROXIMATELY 1500.

10:37:15 22   Q.   DOES ARISTA, IN ORDER TO GET THESE THINGS DONE, DOES

10:37:18 23   ARISTA DEDICATED A LOT OF RESOURCES TO RESEARCH AND

10:37:21 24   DEVELOPMENT?

10:37:21 25   A.   YES, INDEED, IT'S ONE OF OUR HALLMARKS.

10:37:25 1   IF YOU GENERALLY LOOK AT CORPORATIONS, THEY WOULD

10:37:27 2   DEDICATE, YOU KNOW, MAYBE FIVE TO NINE, MAYBE TEN PERCENT OF

10:37:31 3   THEIR REVENUE TO R&D.

10:37:33 4   ARISTA'S WAS CONSISTENTLY DOUBLE DIGITS, IN THE TWENTIES.

10:37:38 5   WE TENDED TO DO, YOU KNOW, TWO TO THREE TIMES MORE AS A

10:37:41 6   PERCENTAGE OF REVENUE IN R&D.

10:37:43 7   AND WE REALLY ARE A COMPANY BUILT BY ENGINEERS FOR

10:37:46 8   ENGINEERS. THAT'S OUR HALLMARK. WE HAVEN'T THROWN A LOT OF

10:37:49 9   INVESTMENT INTO SALES AND MARKETING, THAT'S NOT OUR FORTE, BUT

10:37:54 10   OUR FORTE IS VERY MUCH ENGINEERING.

10:37:57 11   Q.   MS. ULLAL, WHEN DID ARISTA RELEASE ITS FIRST PRODUCT?

10:38:02 12   A.   IN; RIGHT ABOUT THE TIME I CAME, SO THAT WOULD BE FALL OF

10:38:05 13   2008.

10:38:06 14   Q.   OKAY. AND WHAT PRODUCT WAS THAT?

10:38:07 15   A.   THAT WAS THE 7124 LOW LATENCY SWITCH.

10:38:12 16   Q.   AND CAN YOU GIVE THE JURORS JUST A BRIEF DESCRIPTION OF

10:38:15 17   WHAT CAPABILITY THAT HAD, IS THAT A CLOUD TYPE OF SWITCH OR

10:38:19 18   WHAT IS IT?

10:38:20 19   A.   NO, IT ISN'T. IN FACT, WHILE WE WERE WAITING FOR THE

10:38:23 20   CLOUD TO HAPPEN, WE INTRODUCED A ONE-RACK UNIT, 24-PORT 10

10:38:28 21   GIGABIT ETHERNET SWITCH. AND IT WAS THE HIGHEST DENSITY IN A

10:38:32 22   ONE-RACK UNIT. THERE WAS A 24 AND A 48, WHERE WE CRAMMED MORE

10:38:37 23   PORTS THAN ANYONE ELSE COULD. AND IT WAS THE ABSOLUTE LOWEST

10:38:41 24   LATENCY BY FACTOR OF TEN.

10:38:43 25   THE GENERAL PRODUCTS, ETHERNET PRODUCTS IN THE MARKET

10:38:45   1   WERE, YOU KNOW, THREE TO FOUR MILLISECONDS, AND ARISTA WAS 500

10:38:49   2   NANOSECONDS. WE WENT ON TO DO 250 NANOSECONDS AS WELL, BUT THE

10:38:55   3   FIRST ONE WAS 500.

10:38:57   4   Q.   SO WHO WERE THE EARLY CUSTOMERS OF ARISTA THAT WERE

10:38:59   5   INTERESTED IN THAT PRODUCT?

10:39:00   6   A.   WELL, THIS IS A LITTLE BIT IRONIC, BUT BECAUSE MY VERY

10:39:06   7   FIRST WEEK THAT I ARRIVED AT THE COMPANY, ONE OF OUR FIRST

10:39:09   8   CUSTOMERS WAS LEHMAN BROTHERS. IT WAS A BAD OMEN BECAUSE WE

10:39:13   9   ACQUIRED THE CUSTOMER. AND THEN IF YOU REMEMBER, LEHMAN

10:39:17 10   BROTHERS WENT BANKRUPT AFTER THAT. SO IT WAS NOT A GREAT START

10:39:20 11   TO MY CAREER AS A CEO.

10:39:22 12   BUT THE TYPE OF CUSTOMERS WE HAD WERE VERY HIGH FREQUENCY

10:39:25 13   TRADERS, LARGE BANKS, SMALL BANKS, ALGORITHMIC TRADERS.

10:39:29 14   WE WENT ON TO ACQUIRE A HUNDRED OF THEM, AND WE WERE THE

10:39:31 15   MARKET LEADER OR THE DE FACTO LEADER FOR HIGH FREQUENCY

10:39:35 16   TRADING, LOW LATENCY ETHERNET.

10:39:37 17   Q.   AND WHAT BENEFIT WERE THEY LOOKING FOR IN YOUR PRODUCTS?

10:39:40 18   A.   FASTEST SPEED, LOWEST LATENCY, AND ALSO VERY RELIABLE,

10:39:45 19   HIGH QUALITY SOFTWARE. THEY WANTED SOMETHING THAT JUST WORKED.

10:39:48 20   AND THE AMOUNT OF FEEDBACK I GOT ON THE STABILITY AND QUALITY

10:39:52 21   OF OUR SOFTWARE WAS AS HIGH AS THE LOW LATENCY OF OUR PRODUCTS.

10:39:56 22   Q.   CAN YOU OPEN YOUR BINDER TO ARISTA TX 7790, MS. ULLAL.

10:40:08 23   AND TELL US WHETHER YOU RECOGNIZE THAT?

10:40:11 24   A.   YES, I DO.

10:40:12 25   Q.   WHAT IS IT?

10:40:13 1   A.   IT'S AN E-MAIL FROM ONE OF OUR CUSTOMERS, STEVE RUSSELLS

10:40:19 2   FROM MORGAN STANLEY.

10:40:21 3   MR. VAN NEST: YOUR HONOR, I OFFER 7790 IN EVIDENCE.

10:40:23 4   MR. PAK: NO OBJECTION, YOUR HONOR.

10:40:24 5   THE COURT: IT WILL BE ADMITTED.

10:40:26 6   (DEFENDANT'S EXHIBIT 7790 WAS ADMITTED INTO EVIDENCE.)

10:40:26 7   BY MR. VAN NEST:

10:40:27 8   Q.   TELL THE JURY WHAT THIS IS, AND LET'S BLOW UP THE TOP AND

10:40:30 9   THE FIRST PARAGRAPH.

10:40:31 10   A.   STEVE AND I WERE TALKING ABOUT HOW PRODUCTS ARE BUILT.

10:40:37 11   AND STEVE IS ONE OF THE KEY ARCHITECTS AND DECISION MAKERS AT

10:40:42 12   MORGAN STANLEY. AND HE WAS BASICALLY TELLING ME WHILE I MAY BE

10:40:47 13   THE CEO OF THE MOST TRANSFORMATIVE NETWORKING COMPANY HE'D SEEN

10:40:51 14   IN 20 YEARS, HIS MESSAGE TO ME WAS YOU ARE THE BEST TODAY, BUT

10:40:55 15   TODAY IS NOT MY CONCERN, I NEED YOU TO BE DIFFERENT, I NEED

10:41:00 16   NETWORKING TO BE DIFFERENT.

10:41:02 17   SO HE WAS PUSHING ME AND PUSHING ARISTA TO NOT JUST BUILD

10:41:05 18   A GREAT PRODUCT, BUT TO CHANGE THE WAY NETWORKING HAD BEEN

10:41:08 19   BUILT BEFORE, WHICH IN ESSENCE, IS WHAT WE'VE DONE WITH CLOUD

10:41:12 20   NETWORKING.

10:41:12 21   Q.   COULD WE HIGHLIGHT THAT FIRST PARAGRAPH YOU HAVE ON THE

10:41:16 22   SCREEN. THIS WAS OCTOBER 2013. WAS MR. RUSSELL ONE OF YOUR

10:41:23 23   BANKING CUSTOMERS AT MORGAN STANLEY?

10:41:25 24   A.   YES.

10:41:26 25   Q.   AND WHAT BENEFITS WERE THEY ATTRACTED TO IN THE PRODUCT?

10:41:29 1   A.   THEY WERE VERY ATTRACTED TO THE SOFTWARE ARCHITECTURE WE

10:41:33 2   HAD, THE FLEXIBILITY, THE PROGRAMMABILITY. AND ALSO THE FACT

10:41:36 3   THAT WE WERE BUILDING SUCH A HIGH SCALE, SIMPLE OPEN NETWORK

10:41:42 4   WITH A TWO-TIER DESIGN THAT WE CALL THE LEAF AND SPINE.

10:41:46 5   Q.   NOW I TAKE IT ARISTA HAS PRODUCED ADDITIONAL PRODUCTS

10:41:50 6   AFTER THAT FIRST 7124?

10:41:52 7   A.   OH, YEAH, DEFINITELY.

10:41:53 8   Q.   AND I HAVE BESIDE ME HERE ANOTHER ARISTA SWITCH. COULD

10:41:57 9   YOU TELL THE JURORS WHAT IT IS AND APPROXIMATELY WHEN IT WAS

10:42:00 10 INTRODUCED?

10:42:00 11 A.   YEAH. THAT'S KIND OF A COOL ONE, IT'S ONE OF MY

10:42:04 12 FAVORITES.

10:42:04 13   SO IN 2010 WE INTRODUCED THE FIRST SPINE PRODUCT. AND YOU

10:42:08 14 KNOW, YOU MIGHT SAY WELL, IT'S A SPINE. WELL, THIS WAS THE

10:42:11 15 SPINE FOR OUR TOTAL NETWORK. THIS WAS THE BACKBONE.

10:42:15 16   SO UNTIL THEN WE PRODUCED A SMALL 1RU, RACK UNIT PRODUCTS,

10:42:25 17 THAT'S WHAT WOULD BE CALLED LEAF PRODUCTS. FOR THE FIRST TIME

10:42:29 18 IN 2010, ARISTA CAME UP AND WE REALLY PIONEERED THE SPINE

10:42:33 19 CONCEPT IN THE ETHERNET THAT MANY OTHERS FOLLOWED AFTER US.

10:42:37 20   SO THIS WAS, THIS WAS THE 7504, ITS SIBLING WAS THE 7508.

10:42:44 21 FIVE TIMES THE DENSITY, 1/5TH THE POWER.

10:42:48 22 Q.   SO WHEN YOU SAY FIVE TIMES THE DENSITY, WHAT DOES THAT

10:42:51 23 MEAN?

10:42:51 24 A.   IT MEANS THE TYPICAL PRODUCTS IN THE INDUSTRY THAT WERE

10:42:54 25 RUNNING WERE ANYWHERE FROM 48 TO 64 PORTS IN A CHASSIS FOR

10:43:01 1   FULLY HIGH PERFORMANCE NON -- FULL WIRE RATE PERFORMANCE, NOT

10:43:08 2   OVER SUBSCRIBED. AND ARISTA WAS DOING 384 PORTS.

10:43:11 3   Q.   384 PORTS.

10:43:13 4   AND YOU SAID LOW POWER. WHAT DO YOU MEAN?

10:43:16 5   A.   WHEN YOU LOOK AT THE TYPICAL POWER OF PRODUCTS AT THAT

10:43:18 6   TIME, THEY ENDED UP BEING ANYWHERE FROM 60 TO 100 WATTS.

10:43:26 7   ARISTA'S WAS 2 TO 5 WATTS PER PORT.

10:43:31 8   Q.   AND WHY IS THAT SIGNIFICANT TO THE CUSTOMER?

10:43:33 9   A.   IT'S SIGNIFICANT NOT JUST IN A PORT BASIS, BUT WHEN YOU

10:43:36 10   ARE IN A DATA CENTER AND YOU ARE AGGREGATING ALL THOSE PORTS,

10:43:41 11   YOU HAVE TO PUT IN THE RIGHT CAPACITY, THE COOLING TO MAKE THE

10:43:44 12   DATA CENTER RUN.

10:43:45 13   THE COST OF THAT SOMETIMES CAN BE FAR GREATER THAN THE

10:43:47 14   NETWORKING GEAR. SO THE COST OF COOLING AND POWER CAN GO INTO

10:43:50 15   THE MULTI MILLION DOLLARS. SO ARISTA WAS SAVING THEM MILLIONS

10:43:54 16   OF OPERATIONAL DOLLARS BY VIRTUE OF THESE KIND OF DRAMATIC

10:43:59 17   POWER.

10:43:59 18   Q.   NOW WHAT KINDS OF COMPANIES BUY THIS SWITCH? WHO WERE THE

10:44:02 19   CLOUD CUSTOMERS?

10:44:04 20   A.   AS WE MOVED INTO THE SPINE, THE FIRST FEW YEARS WAS MORE

10:44:07 21   FINANCIAL.

10:44:08 22   Q.   SLOW DOWN JUST A LITTLE BIT, MS. ULLAL, BECAUSE WE ARE

10:44:11 23   TRYING TO RECORD EVERY WORD YOU SAY. THANK YOU.

10:44:13 24   A.   THANK YOU.

10:44:15 25   AS WE MOVED INTO THE SPINE, THE CLASS OF OUR CUSTOMERS

10:44:20   1   BECAME VERY DIFFERENT. THESE ARE CUSTOMERS WHERE NETWORKING

10:44:25   2   WAS CHANGING THEIR PRODUCTS, AND THEY WERE BUILDING CLOUDS.

10:44:31   3   SO YOU CAN -- WE CALL THEM THE CLOUD PROVIDERS OR THE

10:44:35   4   CLOUD TITANS, EXAMPLES OF THAT WOULD BE MICROSOFT, FACEBOOK,

10:44:40   5   EBAY, YAHOO, GOOGLE, AMAZON, APPLE, THESE ARE THE CLASS OF

10:44:47   6   CUSTOMERS. AND THEY WERE REALLY PUSHING THE ENVELOPE OF SCALE.

10:44:50   7   OTHER EXAMPLES OF THAT WOULD BE SERVICE PROVIDERS WHO ARE

10:44:53   8   BRINGING IN THE NEW STREAMING AND PERFORMANCE INTO YOUR HOMES

10:44:57   9   LIKE NETFLIX AND COMCAST. AND OF COURSE, OTHERS WOULD BE LIKE

10:45:00   10 WE DISCUSSED EARLIER, LARGE BANKS AS WELL.

10:45:03   11   SO THE CLASS OF CUSTOMERS, THE COMMON THREAD ACROSS ALL OF

10:45:06   12 THEM WAS THEY WANTED TO BUILD HIGH PERFORMANCE SOFTWARE DRIVEN

10:45:10   13 CLOUD NETWORKING, BUT THEY WERE PUSHING THE ENVELOPE OF SCALE

10:45:13   14 AND PROGRAMMABILITY.

10:45:13   15 Q.   NOW ARE ALL THE COMPANIES YOU LISTED IN YOUR ANSWER ARISTA

10:45:17   16 CUSTOMERS?

10:45:17   17 A.   SOME OF THEM I'M NOT ABLE TO REFER TO AS ARISTA CUSTOMERS.

10:45:21   18 Q.   AH, FAIR ENOUGH.

10:45:22   19 A.   BUT-MOST OF THEM ARE.

10:45:25   20 Q.   SO HAS THE PRODUCT, THIS PRODUCT, WON AWARDS IN THE

10:45:29   21 MARKETPLACE?

10:45:29   22 A.   IT DID.

10:45:31   23 Q.   WHAT WERE SOME OF THOSE?

10:45:34   24 A.   ONE OF THE MOST FUN MEMORIES I HAVE OF WINNING AWARDS IS

10:45:40   25 THERE'S A SHOW CALLED INTEROP WHICH IS THE MOST COMMON

10:45:43 1   NETWORKING SHOW FOR ENTERPRISE, GENERALLY SPEAKING, NOT YOUR

10:45:48 2   CLOUD.

10:45:49 3   AND ARISTA WON THE AWARD FOR BEST OF SHOW WITH THE 7500

10:45:54 4   TWICE, BOTH IN 2010 AND IN 2013. IT'S RARE ENOUGH TO WIN IT

10:45:58 5   ONCE, AND GENERALLY ENTERPRISE PRODUCTS WIN IT, BUT TO WIN IT

10:46:02 6   TWICE WAS A REAL HONOR.

10:46:03 7   Q.   DID INDUSTRY GROUPS TEST THE ARISTA SWITCH AGAINST CISCO

10:46:09 8   AND OTHER COMPETITORS?

10:46:11 9   A.   SURE, THEY WERE. THERE WERE A LOT OF INDEPENDENT TESTS.

10:46:16 10   Q.   COULD WE PULL UP TX 5146, IT'S IN EVIDENCE.

10:46:20 11   YOU CAN SEE IT ON THE SCREEN, MS. ULLAL, IF WE COULD PUT

10:46:23 12   THE FIRST PAGE UP.

10:46:25 13   CAN YOU DESCRIBE FOR THE JURY, IT'S IN YOUR BOOK, BUT IT'S

10:46:28 14   ALSO ON THE SCREEN. TELL THE JURY WHAT THIS IS.

10:46:30 15   A.   THIS IS NOT THE 7500, THIS IS THE FIRST PRODUCT, THE 7124.

10:46:36 16   AND IT IS JANUARY OF 2010. THIS WAS PROBABLY ONE OF THE FIRST

10:46:41 17   PUBLISHED INDEPENDENT TESTS ON ARISTA PRODUCTS VERSUS OTHER

10:46:47 18   PEERS IN THE INDUSTRY, WHICH INCLUDED CISCO, HP, DELL, FORCE10,

10:46:52 19   IBM, AND EXTREME.

10:46:54 20   Q.   WAS -- WHAT WAS THE OUTCOME OF THE TEST?

10:46:58 21   A.   AS YOU CAN SEE WE WON THE TOP SPOT ALONG WITH BLADE

10:47:02 22   NETWORKS, AND IT WAS A VERY GRUELLING PERFORMANCE TEST AND

10:47:05 23   REALLY EXPOSED THE WEAKNESSES OF OUR COMPETITORS AS WELL.

10:47:09 24   Q.   WAS THIS AN IMPORTANT MILESTONE IN ARISTA'S HISTORY?

10:47:12 25   A.   YES, VERY MUCH SO. WE WERE A YOUNG COMPANY, AND OUR

10:47:15 1   RECOGNITION COMES FROM NOT US SAYING WE ARE GOOD, BUT OUR

10:47:19 2   CUSTOMERS AND INDEPENDENT BENCHMARKS STATING WE WERE GOOD. AND

10:47:23 3   THIS WAS ONE OF THE FIRST ONES.

10:47:24 4   Q.   AND CAN YOU TELL THE JURY, JUST BRIEFLY, WHAT WERE THE KEY

10:47:29 5   BENCHMARKS THAT ARISTA STOOD OUT AT?

10:47:32 6   A.   WELL, I THINK THE TEST DID A NUMBER OF CRITERIA. BUT WE

10:47:41 7   CLEARLY STOOD OUT IN PERFORMANCE, IN REDUNDANCY, OUR SOFTWARE

10:47:46 8   CAPABILITIES.

10:47:48 9   ONE OF THE RECOGNITIONS WAS ALSO THE WAY WE PURSUED

10:47:51 10   REDUNDANCY WITH WHAT WE CALLED ACTIVE LINKS, WE DIDN'T HAVE

10:47:55 11   THINGS ON STANDBY.

10:47:56 12   AND IN GENERAL, IT WAS JUST A VERY COMPLETE TEST ON HOW TO

10:48:00 13   DO 10 GIGABIT SWITCHING.

10:48:02 14   Q.   NOW WHILE ARE ON AWARDS, CAN YOU OPEN YOUR BINDER UP TO

10:48:07 15   TX 8203. DO YOU HAVE TX 8203?

10:48:17 16   A.   ME?

10:48:18 17   Q.   YES, YOU.

10:48:19 18   TELL US, DO YOU RECOGNIZE THAT PICTURE?

10:48:22 19   A.   YES. IT'S A GOOD LOOKING FOUNDER OF MINE CALLED

10:48:25 20   ANDY BECHTOLSHEIM.

10:48:26 21   Q.   OKAY. AND WHAT WAS THE OCCASION FOR THIS PHOTOGRAPH?

10:48:30 22   A.   THIS WAS AN ERNST & YOUNG ENTREPRENEUR OF THE YEAR AWARD

10:48:34 23   THAT WAS AWARDED TO US LAST YEAR.

10:48:36 24   Q.   OKAY.

10:48:37 25   MR. VAN NEST: AND I WOULD OFFER 8203 IN EVIDENCE,

10:48:39 1   YOUR HONOR.

10:48:40 2   MR. PAK: NO OBJECTION, YOUR HONOR.

10:48:41 3   THE COURT: IT WILL BE ADMITTED.

10:48:42 4   (DEFENDANT'S EXHIBIT 8203 WAS ADMITTED INTO EVIDENCE.)

10:48:42 5   BY MR. VAN NEST:

10:48:43 6   Q.   COULD WE DISPLAY IT SO THE JURORS GET AN IDEA. WE KNOW

10:48:46 7   WHO THAT IS ON THE LEFT. WHO IS ON THE RIGHT?

10:48:47 8   A.   ON THE LEFT IS ME. ON THE RIGHT IS ANDY BECHTOLSHEIM.

10:48:50 9   HE'S A LEGEND IN THE VALLEY. HE FOUNDED SUN AND HE FOUNDED

10:48:54 10   ARISTA. AND HE'S -- HE'S JUST A BRILLIANT ENGINEER.

10:49:00 11   Q.   MS. ULLAL, DOES ARISTA RESPECT THE INTELLECTUAL PROPERTY

10:49:05 12   OF OTHER COMPANIES?

10:49:06 13   A.   OF COURSE, CERTAINLY WE DO.

10:49:08 14   Q.   AND DOES ARISTA DO ANYTHING TO COMMUNICATE THAT RESPECT TO

10:49:12 15   ITS EMPLOYEES?

10:49:13 16   A.   WE DO. WE HAVE EVERY EMPLOYEE SIGN A CODE OF CONDUCT IN

10:49:19 17   AN INVENTIONS AGREEMENT. I THINK WE HAVE BEEN DOING THAT FOR

10:49:23 18   SEVERAL YEARS. AND WE INSIST THAT IF SOMEBODY COMES FROM

10:49:29 19   ANOTHER COMPANY, THAT THEY DO WANT BRING ANY OF THEIR

10:49:33 20   INTELLECTUAL PROPERTY, AND THAT IF THEY USE ANY OPEN SOURCE

10:49:37 21   LICENSES, THAT WE HAVE THE RIGHT MECHANISMS TO LICENSE THEM OR

10:49:40 22   ADOPT THEM.

10:49:41 23   SO WE HAVE THIS ALL VERY WELL DOCUMENTED. BOTH ANDY AND I

10:49:44 24   HAD REVIEWED THIS DOCUMENT MANY TIMES OVER THE YEARS AND

10:49:46 25   IMPROVED IT.

10:49:47   1   Q.   WOULD YOU OPEN YOUR BINDER TO TX 9069, PLEASE.

10:49:54   2   A.   TX --

10:49:56   3   Q.   AND TELL US WHETHER YOU RECOGNIZE THAT.

10:50:03   4   A.   YES, THIS IS ARISTA'S CODE OF BUSINESS CONDUCT.

10:50:07   5   MR. VAN NEST: YOUR HONOR, I WOULD OFFER TX 9069 IN

10:50:10   6   EVIDENCE.

10:50:10   7   MR. PAK: NO OBJECTION YOUR HONOR.

10:50:11   8   THE COURT: IT WILL BE ADMITTED.

10:50:13   9   (DEFENDANT'S EXHIBIT 9069 WAS ADMITTED INTO EVIDENCE.)

10:50:13 10   BY MR. VAN NEST:

10:50:13 11   Q.   COULD WE PUT ON THE SCREEN THE FIRST PAGE, THE TITLE AND

10:50:17 12   THE DATE.

10:50:18 13   WHEN WAS THIS PUBLISHED?

10:50:20 14   A.   OCTOBER OF 2010.

10:50:23 15   Q.   AND JUST GIVE THE JURY A BRIEF DESCRIPTION OF WHAT SORT OF

10:50:26 16   INFORMATION IS SET FORTH IN THIS DOCUMENT?

10:50:29 17   A.   WELL, BASICALLY ARISTA PROVIDES A SET OF GUIDELINES FOR

10:50:33 18   EVERY EMPLOYEE ON HOW TO SELF-MANAGE THEMSELVES AND HOW TO

10:50:37 19   UNDERSTAND OUR CODE OF ETHICS AND WHAT'S TOLERATED AND WHAT'S

10:50:41 20   NOT.

10:50:41 21   AND WE WANT PEOPLE, YOU KNOW, THERE'S THE POLICY ASPECT OF

10:50:48 22   IT AND THEN THERE'S THE CULTURAL ASPECT OF IT. FROM A POLICY

10:50:54 23   ASPECT, WE WANTED PEOPLE TO FULLY COMPLY WITH THE LAW. AND THE

10:50:58 24   CULTURAL ASPECT OF IT IS, WE WANT YOU TO RESPECT ONE ANOTHER

10:51:03 25   AND RESPECT EACH OTHER, AND WHEN IN DOUBT, CHECK WITH THE HR

10:51:07 1   DEPARTMENT AND MAKE SURE YOU ARE ON THE RIGHT TRACK.

10:51:10 2   Q.   AND COULD WE HAVE, MR. DAHM, FROM PAGE 10, THERE'S A

10:51:14 3   PARAGRAPH UNDER THE TITLE "INTELLECTUAL PROPERTY." COULD WE

10:51:18 4   HAVE THAT ON THE SCREEN, PLEASE.

10:51:23 5   BLOW IT ALL UP, THE SECOND PARAGRAPH, IN PARTICULAR.

10:51:26 6   LET'S BLOW THAT SECOND PARAGRAPH UP.

10:51:27 7   MS. ULLAL, TELL THE JURORS WHAT THE CODE OF CONDUCT SAYS

10:51:32 8   HERE WITH RESPECT TO INTELLECTUAL PROPERTY.

10:51:34 9   A.   "WE RESPECT THE INTELLECTUAL PROPERTY OF OTHERS. ARISTA

10:51:36 10   WILL PROVIDE SOFTWARE NECESSARY FOR EMPLOYEES TO PERFORM THEIR

10:51:39 11   FUNCTIONS ADEQUATELY UNDER APPROPRIATE LICENSING AGREEMENTS

10:51:43 12   WITH VENDORS. IT IS AGAINST ARISTA POLICY TO USE, COPY,

10:51:47 13   DISPLAY, OR DISTRIBUTE THIRD-PARTY COPYRIGHTED SOFTWARE,

10:51:51 14   DOCUMENTATION OR OTHER MATERIALS WITHOUT PERMISSION. YOU ARE

10:51:53 15   NOT PERMITTED TO USE SOFTWARE OR DOCUMENTATION EXCEPT TO THE

10:51:57 16   EXTENT THAT APPLICABLE LICENSE AGREEMENTS ALLOW."

10:52:01 17   Q.   AND HAS THAT BEEN THE POLICY AT ARISTA SINCE YOU'VE BEEN

10:52:05 18   THE CEO?

10:52:06 19   A.   ABSOLUTELY.

10:52:07 20   Q.   DOES ARISTA TOLERATE PLAGIARISM BY ITS EMPLOYEES?

10:52:11 21   A.   ABSOLUTELY NOT.

10:52:13 22   Q.   NOW WE'VE HEARD TESTIMONY AND DISCUSSION ABOUT THE FACT

10:52:16 23   THAT WHEN THE LAWSUIT WAS FILED, THERE WAS A CONTENTION THAT

10:52:20 24   SOME USER MANUALS WERE COPIED. WHAT DID YOU LEARN ABOUT THAT?

10:52:25 25   A.   YOU KNOW, I HEARD ABOUT IT FOR THE FIRST TIME WHEN THE

10:52:29 1   CASE WAS FILED BY CISCO. AND MY TEAM REVIEWED IT. I ASKED FOR

10:52:35 2   A THOROUGH INVESTIGATION. AND WE DID FIND THAT A PARTICULAR

10:52:38 3   EMPLOYEE PLAGIARIZED LESS THAN ONE PERCENT OF THE MANUALS, BUT

10:52:43 4   NEVERTHELESS THERE WAS AN ERROR THERE.

10:52:45 5   AND I APOLOGIZED PUBLICLY IN ONE OF THE CONFERENCES. I DO

10:52:51 6   NOT TOLERATE IT. I THINK IT WAS AN HONEST MISTAKE ON THE PART

10:52:54 7   OF THE COMPANY. AND WE FIXED THE MANUALS AND WE TOOK CARE OF

10:52:58 8   THE EMPLOYEE.

10:52:59 9   Q.   HAVE THE MANUALS BEEN REVISED IN LIGHT OF CISCO'S CLAIMS?

10:53:02 10   A.   YES. I ASKED TO DO THEM AS QUICKLY AS POSSIBLE. I THINK

10:53:06 11   WE TOOK ONE TO TWO WEEKS.

10:53:09 12   Q.   OKAY. NOW WE'VE HEARD SOME TESTIMONY ABOUT STATEMENTS YOU

10:53:15 13   MADE IN THE PRESS IN 2013 AND 2014, AND I WANT TO TURN TO THOSE

10:53:19 14   FOR A MINUTE.

10:53:20 15   COULD I HAVE TX 4745 ON THE SCREEN, PLEASE. THIS IS A

10:53:32 16   NETWORKING WORLD ARTICLE IN 2014. THIS IS ACTUALLY 2013.

10:53:40 17   DO YOU GIVE INTERVIEWS FROM TIME TO TIME?

10:53:42 18   A.   I GIVE INTERVIEWS VERY REGULARLY, SINCE 2008, I HAVE

10:53:46 19   PROBABLY BEEN IN THE PRESS, THERE'S PROBABLY BILLIONS OF WORDS

10:53:50 20   THERE.

10:53:50 21   Q.   IS *NETWORK WORLD* ONE OF THE PUBLICATIONS THAT YOU TALKED

10:53:53 22   TO?

10:53:54 23   A.   *NETWORK WORLD* IS THE PRIMARY PUBLICATION IN NETWORKING.

10:53:58 24   Q.   ALL RIGHT. AND LET'S TURN TO THE SECOND PAGE OF THIS, AND

10:54:04 25   THERE'S A QUESTION NEAR THE BOTTOM.

10:54:06 1   SAY I'M A BIG CISCO INSTALLATION. OKAY. GOOD.

10:54:11 2   I WANT TO ASK YOU, MS. ULLAL, WHAT QUESTION WERE YOU

10:54:16 3   RESPONDING TO IN THIS INTERVIEW WHEN YOU TALKED ABOUT "LOOK AND

10:54:21 4   FEEL" OF THE CISCO SYSTEM -- OF THE CISCO SYSTEM.

10:54:28 5   WHAT WAS THE QUESTION?

10:54:29 6   A.   FIRST OF ALL, THE WHOLE ARTICLE WAS ABOUT ARISTA

10:54:32 7   INNOVATION AND WHAT WE DID DIFFERENTLY. AND I JUST SPENT THE

10:54:36 8   PRIOR PAGES DESCRIBING OUR FIVE DIFFERENTIATORS. AND THEN THE

10:54:40 9   QUESTION POSED WAS, IF I'M A BIG CISCO INSTALLATION, HOW WOULD

10:54:44 10 THESE DIFFERENTIATORS COME INTO PLAY?

10:54:46 11   SO MY POINT WAS IF YOU HAVE A LARGE CISCO INSTALLATION, WE

10:54:52 12 WOULD INTEROPERATE WITH THE INSTALLATION BECAUSE WE HAVE SOME

10:54:58 13 CONSISTENT INDUSTRY STANDARD COMMAND-LINE INTERFACES. AND WE

10:55:00 14 WERE COMMUNICATING THE SAME LANGUAGE OF NETWORKING THAT OTHERS

10:55:04 15 WERE AND WE COULD INTEROPERATE WITH THAT.

10:55:06 16 Q.   OKAY. LET'S ACTUALLY GO TO THE LANGUAGE. IT'S THERE

10:55:10 17 WHERE THE ARROW WAS DRAWN, I THINK THAT WAS PUT ON DURING

10:55:13 18 TESTIMONY. COULD WE BLOW THAT UP.

10:55:16 19   IT SAYS "THE TRAINING IS VERY EASY AND A CISCO CCIE EXPERT

10:55:22 20 WOULD BE ABLE TO USE ARISTA RIGHT AWAY BECAUSE WE HAVE SIMILAR

10:55:25 21 COMMAND-LINE INTERFACES AND OPERATIONAL LOOK AND FEEL."

10:55:27 22   LET ME STOP RIGHT THERE. WAS IT ARISTA -- WAS IT A SECRET

10:55:33 23 THAT ARISTA WAS USING A COMMAND-LINE INTERFACE THAT HAD

10:55:37 24 COMMANDS THAT OVERLAPPED WITH CISCO?

10:55:39 25 A.   NO. WE WERE VERY OPEN AND UP FRONT FROM DAY ONE. SO IT

10:55:43   1   WAS NO SECRET. WE SPOKE ABOUT IT EVERY OPPORTUNITY WE GOT,

10:55:49   2   EVERY TIME WE TALKED, WE TOLD THEM WHERE WE DIFFERENTIATED AND

10:55:52   3   WHERE WE COMMUNICATED LIKE OTHERS.

10:55:54   4   Q.   SO WAS THIS STATEMENT ANYTHING NEW THAT YOU HADN'T SAID

10:55:57   5   BEFORE?

10:55:57   6   A.   NO, I WAS JUST MAKING A POINT THAT THERE'S NO INVENTION IN

10:56:01   7   THE STANDARD LANGUAGE OF NETWORKING, WHICH IS CLI, AND WE WERE

10:56:06   8   ADOPTING THE SAME.

10:56:06   9   Q.   AND WHAT DID YOU MEAN WHERE YOU SAID "WHERE WE DON'T HAVE

10:56:09 10   TO INVENT, WE DON'T?"

10:56:10 11   A.   MY POINT WAS WE USE OPEN SOURCE LINUX, WE USE INDUSTRY

10:56:15 12   STANDARD CLI, AND THESE ARE NOT ARISTA INVENTIONS, THESE COME

10:56:17 13   FROM THE INDUSTRY AND WE ADOPT THEM AS WELL.

10:56:20 14   Q.   AND COULD WE GO BACK TO THE COVER OF THIS DOCUMENT.

10:56:26 15   WHAT'S THE DATE OF THIS INTERVIEW, MS. ULLAL?

10:56:30 16   A.   FEBRUARY 2013.

10:56:33 17   Q.   OKAY. SO THAT WAS ALMOST TWO YEARS BEFORE THE LAWSUIT WAS

10:56:37 18   FILED?

10:56:39 19   A.   YEAH. I'M SURE I SAID IT IN 2012, '11, '10, '09, '08 AS

10:56:46 20   WELL. IF YOU LOOK AT THE *NETWORK WORLD* ARTICLE, IT WAS IN

10:56:51 21   2010, JANUARY, THE PRIOR ONE YOU SHOWED ME.

10:56:52 22   Q.   COULD YOU OPEN YOUR BINDER TO TX 566, PLEASE. MAYBE YOU

10:57:06 23   DON'T HAVE IT. I DO.

10:57:07 24   A.   IS THIS A TRICK QUESTION?

10:57:08 25   Q.   MAYBE. DO YOU RECOGNIZE TX 566?

10:57:28 1   A.   I DO.

10:57:29 2   Q.   WHAT IS IT?

10:57:31 3   A.   IT'S AN ARTICLE PUBLISHED BY ADAM LASHINSKY ON AN

10:57:37 4   INTERVIEW HE HAD WITH ME.

10:57:39 5   MR. VAN NEST: YOUR HONOR, I WOULD MOVE TX 566 IN

10:57:42 6   EVIDENCE.

10:57:43 7   MR. PAK: NO OBJECTION, YOUR HONOR.

10:57:43 8   THE COURT: IT WILL BE ADMITTED.

10:57:45 9   (DEFENDANT'S EXHIBIT 566 WAS ADMITTED INTO EVIDENCE.)

10:57:45 10   BY MR. VAN NEST:

10:57:46 11   Q.   AND MS. ULLAL, WHAT WAS THE SUBJECT OF, LET'S PUT IT UP ON

10:57:49 12   THE SCREEN. THE DATE OF THIS IS MARCH OF 2014, CORRECT.

10:57:55 13   A.   CORRECT.

10:57:55 14   Q.   WHO WAS THE SUBJECT OF THIS INTERVIEW?

10:57:58 15   A.   IT WAS A Q&A INTERVIEW. YOU CANNOT SEE THE Q'S BECAUSE

10:58:02 16   THEY ARE NOT PUBLISHED IN THE ARTICLE, BUT ADAM WANTED TO TALK

10:58:06 17   TO ME AS THE CEO OF A FAST GROWING COMPANY AND HE POSED A

10:58:10 18   SERIES OF QUESTIONS THAT I ANSWERED.

10:58:11 19   Q.   ALL RIGHT.

10:58:18 20   COULD WE GO TO THE THIRD OR FOURTH PAGE, WHICH SAYS, "WE

10:58:21 21   THINK THERE'S ENOUGH MARKET?"

10:58:25 22   PRIOR TO THAT. THE PAGE BEFORE. DOWN AT THE BOTTOM

10:58:33 23   THERE, "WE THINK THERE IS ENOUGH MARKET OPPORTUNITY."

10:58:41 24   WHY DON'T YOU TAKE A LOOK IN YOUR BINDER AND LOOK AT THE

10:58:44 25   DOCUMENT.

10:58:44 1   I WILL CALL YOUR ATTENTION, MS. ULLAL, TO THE SECOND TO

10:58:47 2   LAST PAGE DOWN NEAR THE BOTTOM, IT SAYS, "WE THINK THERE'S

10:58:51 3   ENOUGH MARKET OPPORTUNITY, AND ENOUGH CUSTOMERS WHO WANT A

10:58:54 4   SECOND VENDOR."

10:58:56 5   DO YOU SEE THAT LANGUAGE?

10:59:00 6   YEAH, THERE IT IS. NOW WE HAVE IT. THANK YOU.

10:59:02 7   A.   YEAH, I DO SEE IT NOW.

10:59:04 8   Q.   FIRST OF ALL, WHAT WERE YOU DESCRIBING HERE, WHAT WAS THE

10:59:08 9   QUESTION YOU WERE ADDRESSING?

10:59:11 10   A.   THE QUESTION IS NOT LISTED HERE, SO IT'S HARD TO REMEMBER.

10:59:19 11   Q.   WHAT WAS THE SUBJECT YOU WERE ADDRESSING?

10:59:21 12   A.   I THINK THE SUBJECT I WAS ADDRESSING WAS THERE'S AN

10:59:24 13   OVERALL LARGE MARKET WHICH IS 10 TO 16 BILLION, AND CISCO IS

10:59:28 14   THE DOMINANT PLAYER. I GO ON TO SAY, WITH 70 PERCENT SHARE.

10:59:32 15   AND THE MAJORITY OF THAT MARKET IS ENTERPRISE. AND THE

10:59:36 16   POINT I WAS MAKING HERE WAS EVEN ENTERPRISES NEED A SECOND

10:59:40 17   VENDOR. THEN THE POINT I MADE PREVIOUSLY WAS THERE'S ALSO A

10:59:43 18   NEW CLOUD MARKET THAT'S EMERGING AS PART OF THAT SEGMENT.

10:59:46 19   SO WE -- THE REAL POINT I WAS MAKING IN THIS IS NOBODY

10:59:50 20   WILL COME TO ARISTA TO BUILD, TO ASK FOR ANOTHER ENTERPRISE

10:59:55 21   PRODUCT BECAUSE CISCO IS ALREADY SELLING THEM WELL. THEY COME

10:59:58 22   TO ARISTA BECAUSE WE DO SOMETHING BETTER WHICH IS EITHER THE

11:00:01 23   CLOUD OR THEY NEED A SECOND VENDOR.

11:00:04 24   Q.   OKAY. LET'S GO DOWN TO THE NEXT PARAGRAPH AND HIGHLIGHT

11:00:08 25   THAT. "WE HAVE A GREAT DEAL OF RESPECT FOR THE COMPANY."

11:00:11   1   LET'S HIGHLIGHT THAT. OKAY.

11:00:15   2   "WE HAVE A GREAT DEAL OF RESPECT FOR THE COMPANY, AND IN

11:00:18   3   FACT, I THINK OUR APPROACHES ARE ENTIRELY DIFFERENT."

11:00:21   4   I TAKE THAT'S A REFERENCE TO CISCO.

11:00:23   5   A.   CORRECT.

11:00:23   6   Q.   "SINCE I HELPED BUILD THE ENTERPRISE, I WOULD NEVER

11:00:26   7   COMPETE WITH CISCO DIRECTLY IN THE ENTERPRISE IN A CONVENTIONAL

11:00:30   8   WAY. IT MAKES NO SENSE. IT WOULD TAKE ME 15 YEARS AND 15,000

11:00:34   9   ENGINEERS AND THAT'S NOT A RECIPE FOR SUCCESS."

11:00:37 10   WHAT WERE YOU ADDRESSING THERE, MS. ULLAL? WHAT ARE YOU

11:00:40 11   TALKING ABOUT?

11:00:42 12   A.   AGAIN, THE QUESTION WAS WHAT IS CISCO'S TRENDS AND WHAT

11:00:46 13   ARE MINE.

11:00:46 14   AND THE POINT I MADE IN THE PREVIOUS PARAGRAPH IS CISCO

11:00:53 15   WILL COME FROM THEIR STRENGTH OF ENTERPRISE, AND ARISTA IS

11:00:57 16   COMING FROM THEIR KNOWLEDGE OF THE CLOUD.

11:01:02 17   AND TO FURTHER SUPPORT THAT EVIDENCE, I WAS SAYING LOOK,

11:01:06 18   IT WOULD TAKE US 15 YEARS, 15,000 ENGINEERS, A MASSIVE SALES

11:01:11 19   MACHINE TO ATTRACT THE THOUSANDS OF CUSTOMERS.

11:01:16 20   AND I'M VERY RESPECTFUL OF WHAT CISCO HAS DONE THERE, WE

11:01:19 21   ARE NOT TRYING TO BUILD A CISCO, WE ARE TRYING TO BUILD AN

11:01:22 22   ARISTA.

11:01:22 23   Q.   DOES THIS STATEMENT HAVE ANYTHING AT ALL TO DO WITH THE

11:01:25 24   CLI OR THE USER INTERFACE OR ANY OF THAT?

11:01:27 25   A.   NO, IT WAS NOT SPOKEN IN THAT CONTEXT AT ALL.

11:01:31 1   Q.   TODAY, MS. ULLAL, DOES ARISTA COMPETE WITH CISCO IN ANY

11:01:36 2   MARKETS?

11:01:37 3   A.   YES, OF COURSE WE DO.

11:01:39 4   Q.   WHAT MARKETS ARE THOSE?

11:01:40 5   A.   CISCO IS IN A LOT OF MARKETS, BUT THE ONE WE COMPETE IN

11:01:44 6   DIRECTLY IS THE DATA CENTER AND CLOUD MARKET.

11:01:46 7   Q.   AND WHAT FACTORS DO YOU CONSIDER THE MOST IMPORTANT FOR

11:01:50 8   COMPETITION IN THAT MARKET?

11:01:52 9   A.   WELL, WE COVERED THIS A LITTLE BIT, BUT I THINK IT'S

11:01:56 10   PERFORMANCE, IT'S POWER, IT'S RELIABILITY, IT'S

11:02:01 11   PROGRAMMABILITY, FLEXIBILITY, AND AGILITY. AND IT'S REALLY

11:02:07 12   BRINGING A BRAND-NEW NETWORKING ARCHITECTURE AND PLATFORM.

11:02:11 13   Q.   DOES THE CLI CONTRIBUTE TO THE SUCCESS OF ARISTA'S

11:02:14 14   PRODUCTS IN THE CLOUD? IS THAT AN IMPORTANT FACTOR?

11:02:17 15   A.   NO.

11:02:18 16   Q.   WHY NOT?

11:02:18 17   A.   I HAVE NEVER HEARD A CLOUD CUSTOMER TELL ME THEY BOUGHT MY

11:02:24 18   PRODUCTS BECAUSE OF THE CLI. THEY ARE CONVENIENT TO

11:02:29 19   INTEROPERATE, BUT THE REASON THEY CHOSE ARISTA IS FOR IT'S

11:02:35 20   SIGNIFICANT DIFFERENTIATORS.

11:03:02 21   (OFF-THE-RECORD DISCUSSION.)

11:03:02 22   Q.   SO AT SOME POINT, MS. ULLAL, DID ARISTA GROW FROM BEING A

11:03:08 23   PRIVATE COMPANY TO A PUBLIC COMPANY?

11:03:11 24   A.   YES, IT DID.

11:03:12 25   Q.   WHEN DID THAT HAPPEN?

11:03:13 1   A.   THAT WAS IN SUMMER OF 2014.

11:03:18 2   Q.   SUMMER OF 2014?

11:03:19 3   A.   JUNE OF 2014.

11:03:23 4   Q.   AND WHEN DID YOU LEARN THAT THIS LAWSUIT WAS FILED?

11:03:27 5   A.   I LEARNED ABOUT IT IN DECEMBER OF 2014 ON A FRIDAY

11:03:32 6   EVENING.

11:03:32 7   Q.   HOW DID YOU LEARN THAT THE LAWSUIT HAD BEEN FILED?

11:03:36 8   A.   A BUSINESS REPORTER CONTACTED US AND ASKED US FOR OUR

11:03:40 9   RESPONSE ON THE CISCO LAWSUIT, WAS THE FIRST TIME I HEARD ABOUT

11:03:45 10   IT.

11:03:45 11   Q.   SO THE FIRST OCCASION YOU HEARD OF A LAWSUIT WAS WHEN THE

11:03:48 12   BUSINESS PRESS CALLED YOU?

11:03:49 13   A.   YEAH, IT WAS 5:00 P.M. ON A FRIDAY, AND I WAS COMPLETELY

11:03:54 14   SHOCKED. I HAD NO IDEA WHAT THEY WERE TALKING ABOUT.

11:03:57 15   Q.   DID THEY TELL YOU HOW THEY WERE AWARE THAT THE LAWSUIT HAD

11:04:01 16   BEEN FILED?

11:04:02 17   A.   THEY SAID THEY HAD BEEN NOTIFIED BY CISCO AND THEY HAD ALL

11:04:05 18   THE MATERIALS, INCLUDING THE ACTUAL PATENTS THAT INFRINGED THE

11:04:09 19   CLI COPYRIGHT, AND THEY HAD A DECK OF INFORMATION.

11:04:13 20   Q.   NOW PRIOR TO LEARNING THAT, DID ANYONE FROM CISCO CONTACT

11:04:17 21   YOU AT ANY TIME TO COMPLAIN ABOUT THE CLI THAT ARISTA WAS

11:04:22 22   USING?

11:04:23 23   A.   NO, THEY NEVER CONTACTED ME.

11:04:25 24   Q.   DID MR. CHAMBERS EVER ATTEMPT TO RAISE THIS WITH YOU,

11:04:29 25   EITHER IN PERSON OR ON THE PHONE?

11:04:30 1   A.   NO, HE NEVER DID.

11:04:31 2   Q.   WAS THERE ANY REQUEST FROM ANYONE AT CISCO TO ANYONE AT

11:04:35 3   ARISTA FOR A CEASE AND DESIST LETTER OR ANY SORT OF BUSINESS

11:04:41 4   DISCUSSION?

11:04:41 5   A.   NONE TO ME.

11:04:42 6   Q.   THE FIRST NOTICE YOU HAD WAS THIS REPORTER CALLING YOU AND

11:04:46 7   LETTING YOU KNOW THE LAWSUIT HAD BEEN FILED?

11:04:47 8   A.   YES.

11:04:51 9   MR. VAN NEST: I HAVE NOTHING FURTHER, YOUR HONOR.

11:04:56 10   PASS THE WITNESS.

11:04:57 11   THE COURT: MR. PAK, WILL THIS BE YOU?

11:04:59 12   MR. PAK: YES.

11:05:00 13   THE COURT: ALL RIGHT.

11:05:04 14   **CROSS-EXAMINATION**

11:05:04 15   BY MR. PAK:

11:05:33 16   Q.   GOOD MORNING, MS. ULLAL.

11:05:34 17   A.   GOOD MORNING.

11:05:35 18   Q.   IT'S NICE TO SEE YOU AGAIN. YOU TALKED ABOUT A FEW

11:05:41 19   THINGS.

11:05:41 20   I JUST WANT TO CONFIRM, FIRST OF ALL, THAT WHILE YOU WERE

11:05:44 21   AT CISCO, DID YOU PERSONALLY WORK ON AN OPERATING SYSTEM CALLED

11:05:48 22   IOS XR?

11:05:50 23   A.   NO.

11:05:53 24   Q.   DID YOU HAVE PERSONAL KNOWLEDGE OF THE INTERNAL WORKINGS

11:05:57 25   OF THAT OPERATING SYSTEM?

11:05:57 1   A.   NO.

11:05:58 2   Q.   ARE YOU AWARE OF CISCO'S PATENTS WHILE YOU WERE WORKING AT

11:06:01 3   CISCO THAT RELATED TO THE INNOVATIONS IN IOS XR?

11:06:06 4   A.   ME PERSONALLY, ON THE PATENT SIDE? NO.

11:06:09 5   Q.   AND YOU ARE NOT A NAMED INVENTOR ON ANY PATENTS THAT

11:06:12 6   RELATE TO IOS XR TECHNOLOGY, CORRECT?

11:06:14 7   A.   I'M NOT A NAMED INVENTOR PERIOD, ON ANY CISCO PATENTS.

11:06:19 8   Q.   OKAY. NOW, MS. ULLAL, I WANT TO GO BACK TO SOME OF THE

11:06:23 9   STATEMENTS THAT WERE MADE BY YOU IN VARIOUS PRESS ARTICLES.

11:06:30 10   IF WE COULD TURN TO EXHIBIT 566, MR. FISHER.

11:06:40 11   YOU ARE NOT -- JUST GO BACK TO THE END, IT SAYS "I WOULD

11:06:45 12   NEVER COMPETE WITH CISCO DIRECTLY."

11:06:50 13   A.   566.

11:07:05 14   Q.   AT THE END, MR. VAN ASKED YOU ABOUT THIS STATEMENT, "I

11:07:09 15   WOULD NEVER COMPETE WITH CISCO DIRECTLY;" DO YOU RECALL THAT?

11:07:14 16   A.   IS THIS THE SECOND TO LAST PAGE?

11:07:18 17   Q.   YES, I BELIEVE SO. IT'S ON THE SCREEN AS WELL, SO WE CAN

11:07:22 18   TAKE A LOOK.

11:07:30 19   A.   CAN YOU TELL ME WHERE IT IS ON MY DOCUMENT? 4.

11:07:36 20   MR. VAN NEST: IT'S ON THE SCREEN.

11:07:37 21   THE WITNESS: OKAY. WE HAVE A GREAT DEAL OF RESPECT

11:07:38 22   FOR THE COMPANY. OKAY.

11:07:40 23   Q.   AND THE COMPANY THERE IS CISCO, CORRECT?

11:07:44 24   A.   I BELIEVE SO IN HAD THE CONTEXT OF THIS ARTICLE, YES.

11:07:46 25   Q.   AND JUST TO BE CLEAR, YOU ARE NOT DISAVOWING THE

11:07:49 1   STATEMENT, "I WOULD NEVER COMPETE WITH CISCO DIRECTLY IN THE

11:07:52 2   ENTERPRISE IN A CONVENTIONAL WAY, IT MAKES NO SENSE, IT WOULD

11:07:58 3   TAKE ME 15 YEARS AND 15,000 ENGINEERS, AND THAT'S NOT A RECIPE

11:08:02 4   FOR SUCCESS."

11:08:03 5   YOU ARE NOT DISAVOWING THOSE STATEMENTS, CORRECT?

11:08:06 6   A.   YOU KNOW, YOU SPEAK TO THE REPORTERS, SOME OF IT GETS

11:08:09 7   REPORTED. SO I WOULD AGREE THIS IS WHAT WAS TRANSLATED, AND I

11:08:13 8   COULD HAVE SAID MORE, I COULD HAVE SAID LESS, BUT THIS IS WHAT

11:08:16 9   GOT TRANSCRIBED.

11:08:18 10   Q.   IN TERMS OF THE SPIRIT OR THE CONTENT OF YOUR STATEMENT

11:08:21 11   YOU ARE NOT DISAVOWING THIS STATEMENT, CORRECT?

11:08:24 12   A.   TO THE BEST OF MY KNOWLEDGE.

11:08:25 13   Q.   AND MS. ULLAL, IT'S NOT CONVENTIONAL TO COMPETE BY

11:08:31 14   INFRINGING OTHER PEOPLE'S INTELLECTUAL PROPERTY RIGHTS,

11:08:33 15   CORRECT?

11:08:33 16   A.   I DON'T FOLLOW YOUR QUESTION.

11:08:34 17   Q.   IS A CONVENTIONAL WAY TO COMPETE IN YOUR WORLD BY

11:08:39 18   INFRINGING ON OTHER PEOPLE'S INTELLECTUAL PROPERTY RIGHTS?

11:08:42 19   A.   I DON'T THINK YOU UNDERSTAND WHAT I SAID OVER HERE.

11:08:45 20   Q.   I'M JUST ASKING YOU A QUESTION.

11:08:47 21   IS IT CONVENTIONAL BUSINESS PRACTICE TO INFRINGE OTHER

11:08:50 22   PEOPLE'S INTELLECTUAL PROPERTY RIGHTS?

11:08:52 23   A.   NO, NOT AT ALL.

11:08:53 24   Q.   I WANT TO TALK ABOUT ANOTHER STATEMENT THAT I THINK WAS IN

11:08:58 25   THE OTHER DOCUMENT. DO YOU RECALL THE PART ABOUT WHERE WE

11:09:01   1   "DON'T HAVE TO INVENT, WE DON'T?"

11:09:05   2   A.   YES, I EXPLAINED IT WHEN --

11:09:07   3   Q.   YES.

11:09:08   4   A.   YES.

11:09:08   5   Q.   AND AGAIN, JUST BECAUSE SOMETHING IS PUBLIC IN TERMS OF A

11:09:13   6   FEATURE, IF THAT FEATURE IS PROTECTED BY INTELLECTUAL PROPERTY

11:09:17   7   RIGHTS, WHETHER IT'S PATENTS OR COPYRIGHTS, A COMPANY CANNOT

11:09:21   8   USE THOSE PUBLIC FEATURES WITHOUT PERMISSION OR A LICENSE,

11:09:23   9   CORRECT?

11:09:25   10   A.   IF IT IS A PATENTED FEATURE, ABSOLUTELY.

11:09:30   11   Q.   THAT'S RIGHT. SO JUST BECAUSE SOMETHING IS PUBLIC DOES

11:09:34   12   NOT MEAN THAT IT'S FREE TO USE, CORRECT?

11:09:37   13   A.   IF IT IS DEFINED AS AN INDUSTRY STANDARD, I BELIEVE IT'S

11:09:41   14   FREE TO USE. IF IT'S PATENTED, I DON'T BELIEVE IT'S FREE TO

11:09:45   15   USE.

11:09:45   16   Q.   IF IT'S COPYRIGHTED, IT'S NOT FREE TO USE, CORRECT?

11:09:48   17   A.   IF THE COPYRIGHT SAYS IT'S AN INDUSTRY STANDARD CLI, THEN

11:09:51   18   I DON'T VIEW IT AS A COPYRIGHT.

11:09:54   19   Q.   YOU'RE NOT AN EXPERT ON INDUSTRY STANDARDS, ARE YOU?

11:09:56   20   A.   YOU ASKED ME MY VIEW.

11:09:58   21   Q.   YES, MS. ULLAL --

11:09:59   22   A.   I'M STATING MY VIEW.

11:10:01   23   Q.   YOU ARE NOT AN EXPERT IN INDUSTRY STANDARDS, ARE YOU?

11:10:03   24   A.   AM I AN EXPERT ON INDUSTRY STANDARDS?

11:10:06   25   Q.   YES.

11:10:06   1   A.   THAT'S A VERY BROAD TERM. I DON'T NOT IF I AM OR NOT.

11:10:10   2   Q.   ARE YOU AN EXPERT TO COPYRIGHT LAW?

11:10:12   3   A.   NO.

11:10:12   4   Q.   I WANT TO GO BACK TO SOME OF THE TESTIMONY YOU GAVE ABOUT,

11:10:17   5   I THINK THIS PRODUCT AND SOME OF THE OTHER ARISTA PRODUCTS.

11:10:20   6   A.   CERTAINLY.

11:10:20   7   Q.   JUST TO BE CLEAR FOR THE RECORD, ARISTA DID NOT START

11:10:27   8   SHIPPING PRODUCTS UNTIL SEPTEMBER OR OCTOBER OF 2008; IS THAT

11:10:34   9   CORRECT?

11:10:34   10   A.   THEY MAY HAVE SHIPPED SOME PRODUCTS, BUT I THINK THE

11:10:41   11   REVENUE WAS IN SEPTEMBER, OCTOBER, 2008.

11:10:43   12   Q.   AND THAT WAS A MUCH SMALLER PRODUCT, IT WAS NOT THIS SPINE

11:10:49   13   PRODUCT?

11:10:49   14   A.   AS I EXPLAINED IT WAS THE 7124 LEAF PRODUCT.

11:10:53   15   Q.   CAN I CALL THAT THE 7100-GENERATION?

11:10:57   16   A.   CERTAINLY.

11:10:58   17   Q.   SO MS. ULLAL, THE 7100 LINE OF PRODUCTS, THAT WAS DIRECTED

11:11:06   18   AT LOW LATENCY CUSTOMERS, IS THAT A FAIR STATEMENT?

11:11:10   19   A.   THE MOST COMMON POPULATING THIS CASE BECAME LOW LATENCY,

11:11:20   20   YES.

11:11:20   21   Q.   AND THAT FIRST PRODUCT HAD ABOUT 10 OR $15 MILLION IN 2009

11:11:24   22   IN TERMS OF SALES; IS THAT RIGHT?

11:11:25   23   A.   APPROXIMATELY, YES.

11:11:26   24   Q.   AND THERE WERE TWO PRODUCTS, 7124 THEN THERE WAS ALSO THE

11:11:31   25   7148 I BELIEVE; IS THAT RIGHT?

11:11:32 1   A.   THERE WERE TWO FLAVORS OF THE 7148.

11:11:37 2   Q.   AS YOU EXPLAINED IN YOUR DIRECT EXAMINATION, THOSE WERE

11:11:40 3   TYPICALLY USED FOR EXAMPLE, HIGH FREQUENCY WALL STREET TRADERS

11:11:45 4   WHO WANTED SPEED IN TERMS OF BEING ABLE TO MOVE PACKETS AROUND

11:11:49 5   AND EXECUTE DEALS; IS THAT A FAIR SUMMARY?

11:11:51 6   A.   THAT WAS ONE OF THE MOST COMMON USE CASES, THERE WERE

11:11:55 7   OTHERS.

11:11:55 8   Q.   AND DURING THAT 2008 TO 2010 TIME PERIOD, CISCO WAS NOT A

11:12:00 9   MARKET LEADER IN WHAT YOU DEFINED AS THE "LOW LATENCY MARKET,"

11:12:04 10   IS THAT TRUE?

11:12:04 11   A.   NO, IT WASN'T.

11:12:05 12   Q.   AND IN FACT, ACCORDING TO YOU, CISCO DID NOT HAVE A

11:12:08 13   PRODUCT OFFERING THAT WAS SPECIFICALLY DESIGNED FOR THE LOW

11:12:12 14   LATENCY MARKET IN THAT 2008 TO 2010 TIME PERIOD; IS THAT RIGHT?

11:12:17 15   A.   TO THE BEST OF MY KNOWLEDGE, YES.

11:12:19 16   Q.   AND I THINK YOU TESTIFIED TO, IN YOUR DEPOSITION, BUT

11:12:26 17   DURING THAT 2008 TO 2010 TIMEFRAME WHEN ARISTA WAS SELLING ITS

11:12:31 18   LOW LATENCY PRODUCTS, YOU WERE NOT ENCOUNTERING CISCO VERY MUCH

11:12:34 19   IN THE MARKETPLACE AS A COMPETITOR, CORRECT?

11:12:36 20   A.   NOT THAT MUCH.

11:12:37 21   Q.   THE NEW PRODUCT RELEASE THAT YOU TALKED ABOUT WAS THE 7500

11:12:44 22   PRODUCT WHICH WAS RELEASED IN 2010, CORRECT?

11:12:46 23   A.   UH-HUH, YES.

11:12:47 24   Q.   AND YOU TALKED ABOUT THIS AS BEING THE SPINE PRODUCT,

11:12:51 25   CORRECT?

11:12:51   1   A.   CORRECT.

11:12:52   2   Q.   OKAY. AND THE SPINE PRODUCT, THE 7500 PRODUCT LINE, NOW

11:12:59   3   THAT HAS SOME ISSUES WHEN IT WAS FIRST RELEASED, DID IT NOT?

11:13:08   4   A.   ISSUES?

11:13:08   5   Q.   IT DID NOT HAVE A SUCCESSFUL YEAR OF SELLING, THE FIRST

11:13:11   6   YEAR IT WAS OFFERED ON THE MARKET, CORRECT?

11:13:13   7   A.   I THINK WE -- A CHASSIS PRODUCT TAKES A LONG TIME TO BE

11:13:19   8   QUALIFIED AND ACCEPTED. I THINK THE ACCEPTANCE TOOK LONGER,

11:13:24   9   BUT THAT'S NORMAL. I WOULDN'T CALL IT ISSUES.

11:13:26   10   Q.   YOU DON'T RECALL THAT THE 7500 HAD PROBLEMS WITH ITS

11:13:31   11   MERCHANT SILICON CHIP IN TERMS OF TABLE SIZES; YOU DON'T RECALL

11:13:35   12   THAT?

11:13:35   13   A.   I DON'T RECALL THOSE ISSUES. WE KNEW VERY WELL THAT THE

11:13:40   14   SILICON, THEY DON'T HAVE THE TABLE SIZES OF ENTERPRISE

11:13:45   15   PRODUCTS.

11:13:46   16   Q.   ISN'T IT TRUE THAT YOU RECALL REASONS WHY YOU DID NOT HAVE

11:13:51   17   SUCCESS WITH THIS PRODUCT IN 2010 AND 2011 DURING YOUR

11:13:56   18   DEPOSITION, YOU DON'T RECALL THAT TESTIMONY?

11:14:00   19   A.   CAN YOU -- I DIDN'T FOLLOW THE QUESTION. CAN YOU REPEAT

11:14:02   20   THE QUESTION?

11:14:03   21   Q.   I WILL ASK IT THIS WAY, MS. ULLAL, ISN'T IT TRUE THAT

11:14:07   22   CUSTOMERS, MANY CUSTOMERS DID NOT BUY THE INITIAL VERSION OF

11:14:11   23   THE 7500 PRODUCT BECAUSE THE CHIP THAT WAS INSIDE OF THIS

11:14:15   24   PRODUCT DID NOT HAVE ENOUGH ACCESS LIST TABLES AND ROUTES TO BE

11:14:22   25   ABLE TO ACCOMMODATE THOSE CUSTOMERS.

11:14:25 1   IS THAT A TRUE FACT?

11:14:26 2   A.   I THINK, SO THE SHORT ANSWER TO YOUR QUESTION IS YES.

11:14:30 3   Q.   OKAY. AND ISN'T IT ALSO TRUE THAT 20 -- THE FIRST YEAR OF

11:14:39 4   SALES FOR THE ARISTA 7500 PRODUCT DID NOT HAVE A GOOD YEAR IN

11:14:44 5   TERMS OF SALES, THAT WAS IN 2011, TRUE?

11:14:47 6   A.   I THINK RELATIVE TO THE WAY CISCO SELLS, IT WAS NOT A GOOD

11:14:53 7   YEAR BUT RELATIVE TO ARISTA IT WAS A NORMAL YEAR.

11:14:55 8   Q.   YOU MENTIONED IN YOUR DEPOSITION THAT IT WASN'T A GOOD

11:14:57 9   YEAR FOR YOUR PRODUCT?

11:14:58 10   A.   YES, BUT I DON'T THINK IT WAS A BAD YEAR, I THINK IT'S THE

11:15:07 11   PAINS OF A NEW PRODUCT.

11:15:09 12   Q.   YOU ALSO REALIZED THE REASON THE 7500 PRODUCT WAS NOT WELL

11:15:14 13   RECEIVED OR COULD HAVE BEEN BETTER RECEIVED IN 2011 WAS THAT

11:15:18 14   YOU AS A COMPANY WAS BRAND-NEW AND THAT CUSTOMERS WERE NOT

11:15:24 15   GENERALLY AWARE OF THE EOS OPERATING SYSTEM; IS THAT A TRUE

11:15:27 16   STATEMENT?

11:15:28 17   A.   WE WERE A YOUNG COMPANY, MANY OF THEM DIDN'T KNOW WHO

11:15:32 18   ARISTA WAS.

11:15:32 19   Q.   AND THEN THERE WAS A QUALIFICATION PERIOD AS WELL THAT YOU

11:15:35 20   TALKED ABOUT, CORRECT?

11:15:35 21   A.   BOTH FOR THE SPINE AND FOR ARISTA, THAT'S CORRECT. THESE

11:15:39 22   ARE ALL NORMAL STARTUP, SMALL COMPANY CHALLENGES.

11:15:43 23   Q.   SO THE FIRST CHIP HAS SOME ISSUES. YOU THEN DID A

11:15:47 24   REDESIGN OF THE 7500 PRODUCT THAT USED A DIFFERENT CHIP FROM A

11:15:52 25   COMPANY CALLED BROADCOM; IS THAT TRUE?

11:15:54 1   A.   IT WAS THE SAME COMPANY, IT WAS THE NEXT VERSION OF THAT

11:15:58 2   CHIP. SO THE FIRST CHIP WAS CALLED PETRA, AND IT HAD

11:16:02 3   PHENOMENAL SPINE POWER AND DENSITY. THEN THE SECOND CHIP

11:16:05 4   IMPROVED THE TABLE SIZES. SAME KIND, WE JUST CALLED IT ARAD.

11:16:11 5   Q.   AND WHEN DID THE SECOND GENERATION CHIP, ARAD FROM

11:16:15 6   BROADCOM, BECOME INCORPORATED INTO THE 7500 LINE?

11:16:18 7   A.   2013.

11:16:19 8   Q.   AND IN 2013 YOU DID SEE SIGNIFICANT SALES FOR THE 7500

11:16:30 9   LINE OF PRODUCTS; ISN'T THAT TRUE?

11:16:31 10   A.   WE SAW GOOD SALES IN 2010, '11, AND '12 AS WELL, BUT WE

11:16:37 11   SAW IMPROVED SALES FROM 2013.

11:16:38 12   Q.   YOU SAW SIGNIFICANTLY IMPROVED SALES IN 2013, CORRECT?

11:16:42 13   A.   I DON'T KNOW IF IT WAS IMPROVED.

11:16:45 14   Q.   ISN'T IT TRUE, IN 2013 YOU STARTED TO SELL DIRECTLY TO

11:16:50 15   CISCO WITH THE 7500 PRODUCT USING THE SECOND CHIP?

11:16:53 16   A.   I THINK THAT WAS TRUE OF BOTH THE FIRST CHIP AND THE

11:16:56 17   SECOND CHIP. THE DIRECT COMPETITOR FOR THE 7500 SPINE IN BOTH

11:17:03 18   2010 AND 2013 WAS CISCO.

11:17:04 19   Q.   BUT IN DECEMBER OF 2013, INTERNALLY YOU WERE WRITING

11:17:08 20   E-MAILS SAYING THAT CISCO SEEMS PRETTY CLUELESS WHEN IT COMES

11:17:14 21   TO OUR CUSTOMERS AND FINANCIAL RESULTS; YOU WROTE THAT,

11:17:17 22   CORRECT?

11:17:18 23   A.   THAT HAD NOTHING TO DO WITH THE PRODUCT, BUT I DID SAY

11:17:22 24   CISCO DOESN'T SEEM TO KNOW OUR FINANCIALS SINCE WE WERE A

11:17:28 25   PRIVATE COMPANY.

11:17:29 1   Q.   AND SPECIFICALLY, IT WAS ALSO PRETTY CLUELESS IN YOUR

11:17:33 2   ORDER WORDS IN DECEMBER OF 2013, ABOUT CUSTOMERS AS WELL,

11:17:38 3   CORRECT?

11:17:39 4   A.   I DON'T -- CAN YOU REPEAT MY QUOTE? REFRESH MY MEMORY.

11:17:45 5   YOU SEEM TO KNOW WHAT I SAID MORE THAN I WHAT I SAID.

11:17:47 6   Q.   SURE. LET ME TAKE A LOOK AT EXHIBIT 511 IN YOUR BINDER,

11:17:52 7   IF YOU COULD TAKE A LOOK AT THAT. THIS IS THE NEW BINDER I'VE

11:17:55 8   HANDED YOU.

11:17:56 9   A.   YEAH. 511?

11:18:04 10   Q.   511. THIS IS AN E-MAIL THAT WAS SENT TO YOU FROM --

11:18:17 11   A.   FROM ALAN COHEN, AN EX-CISCO PERSON.

11:18:21 12   Q.   TO YOU JAYSHREE, IS THE E-MAIL ALIAS, AND IT SAYS,

11:18:25 13   "DECEMBER 12, 2013," CORRECT?

11:18:27 14   A.   YES.

11:18:30 15   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

11:18:32 16   EXHIBIT 511 INTO EVIDENCE.

11:18:34 17   MR. VAN NEST: NO OBJECTION, YOUR HONOR.

11:18:35 18   THE COURT: IT WILL BE ADMITTED.

11:18:36 19   (PLAINTIFF'S EXHIBIT 511 WAS ADMITTED INTO EVIDENCE.)

11:18:36 20   BY MR. PAK:

11:18:37 21   Q.   IF WE COULD HAVE THAT ON THE SCREEN.

11:18:45 22   SO MR. COHEN WRITING TO YOU, AND I ALSO BELIEVE

11:18:49 23   MR. SCHEINMAN, WHO WE'VE HEARD ABOUT.

11:18:51 24   A.   YES, HE'S MY BOARD MEMBER.

11:18:53 25   Q.   SO HE'S, AGAIN, FORMER CISCO, NOW BOARD MEMBER AT ARISTA;

11:18:56	1	IS THAT TRUE?
11:18:57	2	A. CORRECT.
11:18:57	3	Q. IN THIS E-MAIL JAYSHREE WROTE, AND THAT'S YOU, MS. ULLAL,
11:19:01	4	CORRECT?
11:19:02	5	A. YES. SO THE TITLE OF THIS IS "SOME INVESTOR REPORT,"
11:19:13	6	NOTHING TO DO WITH THE PRODUCTS YOU MENTIONED. AND THE CONTEXT
11:19:19	7	IS THAT I'M SAYING THAT CISCO DOESN'T SEEM TO KNOW OUR
11:19:22	8	FINANCIAL NUMBERS, BUT YET KEEPS SAYING BEATING ARISTA.
11:19:29	9	Q. SO LET'S LOOK AT WHAT EXACTLY YOU SAID.
11:19:32	10	"LOL. WE ARE HAVING MORE FUN WITH BEATING THEM AT
11:19:35	11	CUSTOMERS AND PUTTING UP NUMBERS. CISCO SEEMS PRETTY CLUELESS
11:19:39	12	OF OUR RESULTS AND YET HIGH ON RHETORIC."
11:19:42	13	THOSE WERE YOUR WORDS, CORRECT?
11:19:43	14	A. YEAH.
11:19:44	15	Q. I THINK ON YOUR DIRECT EXAMINATION YOU TALKED ABOUT ONE OF
11:19:51	16	YOUR ROLES AS CEO IS TO BE THE "KEEPER OF VALUES," DID I GET
11:19:56	17	THAT RIGHT?
11:19:56	18	A. YOU BET.
11:19:58	19	Q. SO IT'S IMPORTANT TO YOU TO MAINTAIN A HIGH DEGREE OF
11:20:01	20	ETHICAL VALUES AT ARISTA, THAT'S PART OF YOUR JOB
11:20:04	21	RESPONSIBILITIES?
11:20:05	22	A. THAT'S RIGHT.
11:20:05	23	Q. AND I THINK MR. VAN NEST SHOWED YOU SOME CODE OF CONDUCT
11:20:08	24	THAT WAS ONE PARAGRAPH OUT OF AN 18-PAGE DOCUMENT; IS THAT
11:20:12	25	TRUE?

11:20:12 1   A.   YES.

11:20:13 2   Q.   OKAY. NOW ISN'T IT TRUE, MS. ULLAL, THAT BESIDES HANDING

11:20:18 3   OUT THAT ONE DOCUMENT, YOU CAN'T TELL THIS JURY WITH ANY

11:20:21 4   CERTAINTY WHETHER ARISTA'S EMPLOYEES RECEIVE ANY FORMAL

11:20:25 5   TRAINING ON HOW TO RESPECT THE INTELLECTUAL PROPERTY RIGHTS OF

11:20:29 6   OTHER COMPANIES, TRUE?

11:20:30 7   A.   I CAN'T TELL YOU WITH FULL CERTAINTY ALL WE DID IN THOSE

11:20:37 8   EARLY YEARS, NO.

11:20:38 9   Q.   INSOFAR AS YOU KNOW, ARISTA DOESN'T HAVE ANY PROGRAMS IN

11:20:43 10   PLACE TO ENSURE THAT IT DOES NOT INFRINGE PATENTS OWNED BY

11:20:47 11   OTHER COMPANIES, CORRECT?

11:20:48 12   A.   MY LEGAL DEPARTMENT AND HR DEPARTMENT DOES THAT, I'M NOT

11:20:53 13   THE EXPERT.

11:20:53 14   Q.   YOU ARE NOT AWARE OF THAT PERSONALLY, CORRECT?

11:20:56 15   A.   I'M NOT THE EXPERT.

11:20:57 16   Q.   AND YOU ARE NOT AWARE OF ANY PROGRAMS AT ARISTA TO ENSURE

11:21:01 17   THAT ITS PRODUCTS DO NOT INFRINGE THE COPYRIGHTS OF OTHER

11:21:05 18   COMPANIES, CORRECT?

11:21:06 19   A.   I'M NOT THE EXPERT ON THE PROGRAMS.

11:21:08 20   Q.   AND ALTHOUGH YOU ARE THE "KEEPER OF VALUES," YOU NEVER

11:21:12 21   INVESTIGATED WHETHER ANY ARISTA ENGINEERS PRIOR TO THIS

11:21:14 22   LAWSUIT, YOU NEVER INVESTIGATED WHETHER ANY ARISTA ENGINEERS

11:21:17 23   HAD ACTUALLY COPIED SCREEN OUTPUTS FROM CISCO PRODUCTS IN ORDER

11:21:22 24   TO DEVELOP ARISTA'S EOS, CORRECT?

11:21:25 25   A.   PERSONALLY? NO, I DIDN'T INVESTIGATE PERSONALLY.

11:21:28 1   Q.   AND YOU HAD NEVER ASKED ANYONE AT ARISTA WHETHER THEY HAD

11:21:32 2   COPIED SCREEN OUTPUTS AND COMMANDS FROM CISCO PRODUCTS IN

11:21:38 3   IMPLEMENTING ITS CLI, CORRECT?

11:21:40 4   A.   NO, I DID NOT.

11:21:41 5   Q.   OKAY. AND YOU AGREE WITH ME THAT IN TERMS OF CLI, YOU

11:21:48 6   WERE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION FOR

11:21:52 7   COMMAND-LINE INTERFACE COMMANDS, CORRECT?

11:21:55 8   A.   TO THE BEST OF MY KNOWLEDGE, NO.

11:21:57 9   Q.   OKAY. AND TO THE BEST OF YOUR KNOWLEDGE, YOU ADMIT THAT

11:22:00 10   THERE ARE NO STANDARDS SETTING ORGANIZATIONS THAT REQUIRE THE

11:22:04 11   USE OF CISCO CLI COMMANDS FOR INTEROPERABILITY, TRUE?

11:22:08 12   A.   THERE ARE NO STANDARD CLI ORGANIZATIONS FOR CISCO? I'M --

11:22:16 13   CISCO WOULD HAVE TO ANSWER THAT, NOT ME.

11:22:18 14   Q.   OKAY.

11:22:19 15   AND YOU WOULD AGREE THAT FOR ANY GIVEN FEATURE IN AN

11:22:23 16   OPERATING SYSTEM, THERE ARE MANY DIFFERENT WAYS TO WRITE

11:22:26 17   COMMANDS IN A COMMAND-LINE INTERFACE TO INVOKE THE SAME

11:22:29 18   FEATURE, CORRECT?

11:22:33 19   A.   I'M NOT AN EXPERT ON HOW CLI COMMANDS ARE WRITTEN OR

11:22:39 20   CHOSEN.

11:22:40 21   Q.   BUT YOU AGREE YOU CAN WRITE DIFFERENT COMMANDS FOR THE

11:22:43 22   SAME FUNCTIONALITY; RIGHT?

11:22:44 23   A.   I DON'T WANT TO TAKE A POINT OF VIEW ON SOMETHING I'M NOT

11:22:46 24   AN EXPERT ON.

11:22:47 25   Q.   OKAY. LET'S TAKE A LOOK AT WHAT YOU SAID IN YOUR

11:22:49 1   DEPOSITION.

11:22:50 2   MR. PAK: YOUR HONOR, WE ARE LOOKING AT PAGE 228,

11:22:54 3   LINE 21 TO 24.

11:22:56 4   THE WITNESS: OKAY. SORRY, WHICH SECTION?

11:22:59 5   MR. PAK: THIS IS IN YOUR DEPOSITION TRANSCRIPT.

11:23:01 6   THE WITNESS: OKAY. SORRY. PAGE?

11:23:05 7   MR. PAK: 228. AND MS. ULLAL, IT WILL BE AT LINE 21

11:23:14 8   TO 24.

11:23:25 9   AND YOUR HONOR, MAY I PLAY THIS VIDEO?

11:23:27 10   THE COURT: YES.

11:23:29 11   **(THE VIDEO DEPOSITION OF JAYSHREE ULLAL WAS PLAYED INTO**

11:23:37 12   **THE RECORD.)**

11:23:37 13   BY MR. PAK:

11:23:38 14   Q.   THAT WAS YOUR SWORN TESTIMONY; RIGHT, MS. ULLAL?

11:23:40 15   A.   YEAH, IT COULD BE, BUT I'M STILL NOT AN EXPERT ON THAT.

11:23:44 16   Q.   YOU RAN THE SWITCHING BUSINESS AT CISCO AND YOU ARE NOT AN

11:23:50 17   EXPERT ON CLI COMMANDS?

11:23:51 18   A.   THE SWITCHING BUSINESS DID NOT REQUIRE ME TO BE AN EXPERT

11:23:55 19   ON CLI COMMANDS.

11:23:56 20   Q.   BUT YOU ALSO AGREE, MS. ULLAL, THAT ARISTA COULD CHANGE

11:23:59 21   THE WORDING OF ANY OF ITS CLI COMMANDS WITHOUT AFFECTING THE

11:24:04 22   UNDERLYING FUNCTIONALITY OF ITS PRODUCTS, TRUE?

11:24:08 23   A.   LOOK, I AM NOT THE EXPERT ON WHAT ARISTA CAN AND CANNOT DO

11:24:12 24   IN DESIGNING THE CLI'S. SO I'M NOT GOING TO BE ABLE TO DO

11:24:16 25   JUSTICE TO YOUR QUESTIONS.

11:24:17 1   Q.   OKAY. LET'S TAKE A LOOK AT WHAT YOU SAID IN YOUR

11:24:20 2   DEPOSITION.

11:24:20 3   A.   OKAY.

11:24:21 4   Q.   IF YOU WOULD LOOK AT PAGE 253, LINE 14 TO 22.

11:24:29 5   A.   253?

11:24:30 6   Q.   YES.

11:24:45 7   MR. PAK: YOUR HONOR, MAY I PLAY THIS VIDEO CLIP AS

11:24:48 8   WELL?

11:24:48 9   THE COURT: YES.

11:24:56 10   **(THE VIDEO DEPOSITION OF JAYSHREE ULLAL WAS PLAYED INTO**

11:24:56 11   **THE RECORD.)**

11:25:22 12   BY MR. PAK:

11:25:22 13   Q.   THAT WAS YOUR SWORN TESTIMONY?

11:25:23 14   A.   YEAH, I LOOK AS CONFUSED THERE AS I DO NOW.

11:25:26 15   Q.   MS. ULLAL, YOU HAVE NEVER HEARD OF CISCO MAKING AN

11:25:31 16   EXPLICIT STATEMENT THAT THE COMMANDS AND SCREEN OUTPUTS IN A

11:25:38 17   CLI COULD BE USED BY A COMPETITOR WITHOUT A LICENSE, CORRECT?

11:25:44 18   A.   I DON'T KNOW -- ARE YOU TALKING ABOUT INSIDE CISCO OR

11:25:49 19   EXTERNALLY OR WHAT ARE YOU TALKING ABOUT.

11:25:51 20   Q.   HAVE YOU EVER SEEN AN INSTANCY WHERE CISCO HAS STATED

11:25:54 21   EXPLICITLY THAT COMMAND AND SCREEN OUTPUTS IN ITS CLI INTERFACE

11:25:59 22   COULD BE USED BY A COMPETITOR WITHOUT A LICENSE OR PERMISSION?

11:26:03 23   A.   I HAVE NEVER HEARD SUCH AN EXPLICIT SENTENCE OR

11:26:08 24   CONSTRUCTION FROM CISCO, NO.

11:26:09 25   Q.   MR. VAN NEST ASKED YOU ABOUT MR. CHAMBERS NOT CALLING YOU

11:26:17   1   FOR THE LAWSUIT THAT WAS FILED; DO YOU RECALL THAT?

11:26:19   2   A.   YES.

11:26:20   3   Q.   OKAY. BUT ISN'T IT ALSO TRUE THAT NEITHER YOU OR ANYONE

11:26:24   4   ELSE AT ARISTA CONTACTED CISCO FOR A CLARIFICATION OF WHAT

11:26:30   5   CISCO MEANT BY THE TERM "INDUSTRY STANDARD" WHEN IT USED IT IN

11:26:35   6   MARKETING DOCUMENTS; ISN'T THAT A TRUE STATEMENT?

11:26:37   7   A.   I CONTACTED CISCO TO TALK ABOUT THIS, AND I WOULD HAVE

11:26:43   8   LOVED TO HAVE THAT DISCUSSION, BUT THERE WAS NO RESPONSE.

11:26:47   9   Q.   I'M TALKING ABOUT PRIOR TO THE LAWSUIT, MS. ULLAL.

11:26:50 10   A.   OH, BEFORE THE LAWSUIT? NO, I NEVER CONTACTED CISCO

11:26:55 11   SPECIFICALLY TO ASK ABOUT CLI, THE THOUGHT NEVER CROSSED MY

11:26:58 12   MIND.

11:26:58 13   Q.   BEFORE THE LAWSUIT WAS FILED YOU NEVER PICKED UP THE PHONE

11:27:01 14   AND ASKED FOR A LICENSE OR PERMISSION TO USE ANY OF THE CLI

11:27:05 15   ELEMENTS FROM CISCO, TRUE?

11:27:07 16   A.   TRUE.

11:27:07 17   Q.   OKAY. YOU TALKED ABOUT A LOT OF THINGS THAT YOU SAID

11:27:14 18   PUBLICLY TO THE INDUSTRY, I THINK YOU SAID THAT WE HAVE BEEN

11:27:18 19   OPEN ABOUT WHAT YOU HAVE BEEN DOING?

11:27:21 20   A.   YES.

11:27:21 21   Q.   BUT ISN'T IT A FACT THAT YOU PERSONALLY HAVE NEVER TOLD

11:27:24 22   THE PUBLIC UNTIL THIS LAWSUIT, THAT CISCO CLI HAS BEEN COPIED

11:27:32 23   INTO ARISTA PRODUCTS; YOU'VE NEVER SAID THAT, HAVE YOU?

11:27:37 24   A.   USED THOSE EXACT WORDS?

11:27:39 25   Q.   LET ME ASK IT THIS WAY: HAVE YOU EVER TOLD CUSTOMERS THAT

11:27:43 1   ARISTA ENGINEERS WERE COPYING CLI COMMANDS FROM CISCO?

11:27:46 2   A.   NO.

11:27:46 3   Q.   YOU NEVER TOLD CISCO OR CUSTOMERS THAT?

11:27:52 4   A.   THOSE EXACT WORDS? HAVE I TOLD A CUSTOMER THAT ARISTA

11:27:58 5   ENGINEERS EXACTLY COPIED THE CISCO CLI, ARE YOU ASKING ME THAT?

11:28:02 6   TO THE BEST OF MY KNOWLEDGE, I DIDN'T USE THOSE EXACT WORDS.

11:28:05 7   I HAVE TOLD CUSTOMERS THAT WE INTEROPERATE WITH CISCO AND

11:28:09 8   WE HAVE THE SAME CISCO-LIKE CLI.

11:28:11 9   Q.   ARE YOU DENYING THAT CUSTOMERS WERE TOLD BY ARISTA

11:28:16 10   ENGINEERS THAT CISCO'S CLI COMMANDS WERE COPIED INTO ARISTA

11:28:20 11   PRODUCTS? ARE YOU DENYING THAT?

11:28:24 12   A.   THAT'S A SEPARATE QUESTION. YOU ARE ASKING ME IF I TOLD

11:28:27 13   ENGINEERS THAT ARISTA ENGINEERS DID THE WORK. NOW YOU ARE

11:28:30 14   ASKING ME A SLIGHTLY DIFFERENT QUESTION.

11:28:32 15   COULD YOU REPEAT THE QUESTION?

11:28:33 16   Q.   YES.

11:28:35 17   ARE YOU DENYING THAT ARISTA PEOPLE TOLD CUSTOMERS THAT

11:28:40 18   ARISTA HAD COPIED CLI COMMANDS INTO ARISTA PRODUCTS?

11:28:45 19   A.   YOU ARE ASKING WHAT ARISTA PEOPLE TOLD NOT WHAT I TOLD.

11:28:49 20   Q.   CORRECT.

11:28:49 21   A.   NO, I'M NOT DENYING THAT.

11:28:51 22   Q.   YOU TALKED ABOUT AN EMPLOYEE THAT WAS TAKEN CARE OF,

11:29:01 23   MR. SOLLENDER; RIGHT?

11:29:04 24   A.   I DIDN'T MENTION THE NAME IN THE TESTIMONY, BUT YES.

11:29:08 25   Q.   SO WHEN YOU SAY TAKEN CARE OF, YOU FIRED THAT INDIVIDUAL,

11:29:10 1   IS THAT TRUE?

11:29:11 2   A.   YEAH. I DIDN'T PERSONALLY FIRE HIM.

11:29:13 3   Q.   YOU DIDN'T KNOW HIM BUT YOU MADE SURE THAT HE WAS --

11:29:16 4   A.   I KNEW OF HIM.

11:29:16 5   Q.   YOU KNEW OF MR. SOLLENDER.

11:29:18 6   A.   YEAH.

11:29:19 7   Q.   SO MR. SOLLENDER HAD COPIED LESS THAN ONE PERCENT OF THE

11:29:24 8   DOCUMENTATION AND YOU DECIDED TO FIRE HIM, CORRECT?

11:29:26 9   A.   YEAH. I DON'T TOLERATE PLAGIARISM.

11:29:29 10   Q.   OKAY. THE BUT FOR ALL THE COPING OF CISCO CLI COMMAND

11:29:33 11   OUTPUTS AND SCREENS, HELP STRINGS, COMMANDS, YOU ON BEHALF OF

11:29:38 12   ARISTA, HAS NOT TAKEN A SINGLE ACTION TO EITHER REMOVE THOSE

11:29:42 13   ELEMENTS OR TO FIRE ANYONE AT ARISTA, CORRECT?

11:29:47 14   A.   NO.

11:29:48 15   MR. PAK: THAT'S ALL I HAVE, YOUR HONOR.

11:29:49 16   THE COURT: THANK YOU.

11:29:50 17   REDIRECT FOR THIS WITNESS?

11:29:52 18   **REDIRECT EXAMINATION**

11:29:53 19   BY MR. VAN NEST:

11:29:59 20   Q.   JUST VERY BRIEFLY, YOUR HONOR.

11:30:01 21   MS. ULLAL, HOW LONG HAS ARISTA BEEN USING THE CLI THAT

11:30:07 22   CISCO IS NOW COMPLAINING ABOUT?

11:30:10 23   A.   OVER EIGHT YEARS.

11:30:11 24   Q.   AND WAS THE CLI INCLUDED IN THE FIRST PRODUCT BACK IN

11:30:18 25   2008?

11:30:19 1   A.   YES.

11:30:19 2   Q.   AND UNDERSTANDING THAT YOU'VE ADDED TO IT, THE CLI

11:30:22 3   ELEMENTS THAT CISCO IS COMPLAINING ABOUT, HAVE THEY BEEN IN THE

11:30:25 4   PRODUCT THE WHOLE TIME?

11:30:27 5   A.   PRETTY MUCH, YES.

11:30:28 6   Q.   HAVE THEY BEEN PUBLIC?

11:30:30 7   A.   VERY PUBLIC.

11:30:31 8   Q.   HAVE YOU PROMOTED THEM AS EITHER IOS-LIKE OR CISCO-LIKE?

11:30:37 9   A.   YES, ALL OF THE ABOVE.

11:30:39 10   Q.   HAS THAT EVER BEEN A SECRET TO ANYBODY?

11:30:43 11   A.   NO, QUITE THE OPPOSITE.

11:30:44 12   Q.   DID ANYTHING CHANGE IN THE SPRING OF 2014 WITH RESPECT TO

11:30:47 13   THAT?

11:30:47 14   A.   NO, IT WAS THE SAME CONSISTENT TRANSPARENT COMMUNICATION

11:30:53 15   FROM 2008 TO 2014.

11:30:54 16   Q.   AND YOU WERE ASKED WHETHER ARISTA ASKED FOR A LICENSE OR

11:30:59 17   PERMISSION, DID IT OCCUR TO YOU TO ASK CISCO FOR PERMISSION TO

11:31:04 18   USE THE CLI?

11:31:05 19   A.   NO.

11:31:06 20   Q.   WHY NOT?

11:31:07 21   A.   BECAUSE EVEN WHEN I WAS AT CISCO, WE ENCOURAGED THE OPEN

11:31:12 22   USE OF THE INDUSTRY STANDARD CLI. WE WANTED OTHER VENDORS TO

11:31:17 23   USE IT, WE WANTED MULTI VENDOR INTEROPERABILITY. SO IT NEVER

11:31:21 24   OCCURRED IT ME THAT CISCO SUDDENLY CONSIDERED IT THEIR

11:31:24 25   INTELLECTUAL PROPERTY ALONE.

11:31:25 1   Q.   AND WHAT WAS THE BENEFIT TO CISCO, GOING BACK TO YOUR DAYS

11:31:30 2   THERE, OF ENCOURAGING PEOPLE TO THINK OF THE CLI AS INDUSTRY

11:31:36 3   STANDARD?

11:31:36 4   A.   WELL, CISCO WAS A NEW VENDOR IN SWITCHING. COMPANIES LIKE

11:31:41 5   FOUNDRY AND HP WERE IMPLEMENTING THE SAME CLI, AND IT WAS

11:31:44 6   CONVENIENT.

11:31:45 7   AND LIKEWISE, EVEN WHEN JUNIPER INTRODUCED THE ENTERPRISE

11:31:50 8   VERSION OF ROUTING, CISCO WANTED A BROAD ECO SYSTEM, AND FOR

11:31:56 9   THEIR CLI TO BECOME THE DE FACTO OPERATION FOR COMMUNICATION.

11:32:02 10   MR. VAN NEST: I HAVE NOTHING FURTHER, YOUR HONOR.

11:32:04 11   MR. PAK: I HAVE A FEW MORE FOLLOWUP QUESTIONS,

11:32:06 12   YOUR HONOR.

11:32:07 13   **RECROSS-EXAMINATION**

11:32:07 14   BY MR. PAK:

11:32:08 15   Q.   FIRST OF ALL MS. ULLAL, YOU WERE AT CISCO WHEN CISCO SUED

11:32:12 16   HUAWEI?

11:32:12 17   A.   I WAS EMPLOYED AT CISCO.

11:32:14 18   Q.   OKAY. BUT UNTIL THIS LAWSUIT, YOU PERSONALLY WERE NOT

11:32:18 19   AWARE OF THE DETAILS OF THAT LAWSUIT, CORRECT?

11:32:20 20   A.   CORRECT.

11:32:20 21   Q.   SO YOU DON'T KNOW ONE WAY OR THE OTHER WHETHER CISCO

11:32:24 22   INCLUDED A CLAIM FOR COPYRIGHT INFRINGEMENT AGAINST HUAWEI

11:32:29 23   BASED ON THE COPYING OF CISCO CLI, CORRECT?

11:32:31 24   A.   NO.

11:32:34 25   Q.   YOU TALKED ABOUT THE CLI BEING THE SAME AT ARISTA SINCE

11:32:37 1   2008. YOU DON'T KNOW THAT PERSONALLY, DO YOU? YOU DON'T KNOW

11:32:42 2   WHICH COMMANDS WERE ADDED WHEN BY ARISTA, DO YOU?

11:32:47 3   A.   I KNOW THEY THERE ARE MORE AND MORE COMMANDS ADDED SINCE

11:32:52 4   2008, YES.

11:32:53 5   Q.   THAT'S RIGHT. SO IN 2012, ISN'T IT TRUE THAT OVER 350 OF

11:32:58 6   THE MULTIWORD COMMANDS AT ISSUE WERE FIRST INCORPORATED INTO AN

11:33:01 7   ARISTA PRODUCT, WERE YOU AWARE OF THAT FACT?

11:33:04 8   A.   I'M NOT AWARE OF EXACTLY HOW MANY, BUT I'M GENERALLY

11:33:07 9   AWARE.

11:33:07 10   Q.   AND YOU ARE GENERALLY AWARE THAT THE INITIAL SET OF

11:33:10 11   PRODUCTS THAT ARISTA WAS MAKING HAD LIMITED FEATURES AND

11:33:13 12   LIMITED COMMANDS, CORRECT?

11:33:14 13   A.   BECAUSE THEY HAD LIMITED FEATURES, THEY HAD LIMITED

11:33:17 14   COMMANDS, THAT'S CORRECT.

11:33:18 15   Q.   SO WHEN YOU INTRODUCED THE SPINE PRODUCT IN 2011 AND 12,

11:33:22 16   THERE WERE MANY, MANY MORE FEATURES AND MANY, MANY MORE

11:33:26 17   COMMANDS THAT WERE ADDED TO EOS; YOU DON'T DENY THAT, DO YOU?

11:33:29 18   A.   NO. THE MORE THE FEATURES, THE MORE THE COMMAND LINE.

11:33:32 19   Q.   AND MORE THE COMMANDS THAT WERE COPIED FROM CISCO,

11:33:35 20   CORRECT?

11:33:35 21   A.   THEY WERE INDUSTRY STANDARD FEATURES AND ACTION WORDS.

11:33:40 22   Q.   AND MS. ULLAL, YOU TALKED ABOUT JUNIPER. YOU KNOW THAT

11:33:44 23   JUNIPER'S CLI IS DIFFERENT THAN CISCO'S CLI, CORRECT?

11:33:47 24   A.   NO. THE JUNIPER ENTERPRISE CLI IS SIMILAR TO THE ARISTA

11:33:51 25   CLI AND CISCO CLI.

11:33:53 1   Q.   YOU HAVE NO PERSONAL KNOWLEDGE OF JUNIPER CLI COMMANDS?

11:33:56 2   A.   I HAVE PERSONAL KNOWLEDGE THAT THE SERVICE PROVIDER CLI IS

11:34:00 3   DIFFERENT.

11:34:00 4   MR. PAK: OKAY. THAT'S IT, YOUR HONOR.

11:34:02 5   MR. VAN NEST: NOTHING FURTHER, YOUR HONOR.

11:34:03 6   THE COURT: AND MAY MS. ULLAL BE EXCUSED?

11:34:07 7   MR. VAN NEST: SHE MAY BE.

11:34:08 8   THE COURT: MS. ULLAL, THANK YOU FOR YOUR TESTIMONY.

11:34:11 9   YOU ARE FREE TO GO.

11:34:12 10   THE WITNESS: THANK YOU, JUDGE. I APPRECIATE IT.

11:34:24 11   THE COURT: YOUR NEXT WITNESS, MR. VAN NEST.

11:34:25 12   MR. VAN NEST: YES, MR. KRISHNAN WILL PRESENT

11:34:29 13   DR. JEFF CHASE.

11:34:46 14   THE COURT: DR. CHASE, IF YOU WOULD COME FORWARD TO

11:34:48 15   THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

11:34:53 16   **(DEFENDANT'S WITNESS, JEFFREY CHASE, WAS SWORN.)**

11:34:54 17   THE WITNESS: YES.

11:35:08 18   MR. KRISHNAN: I THINK WE HAVE A WITNESS BINDER FOR

11:35:10 19   DR. CHASE COMING UP.

11:35:18 20   THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR

11:35:20 21   LAST NAME FOR THE RECORD.

11:35:21 22   THE WITNESS: MY NAME IS JEFFREY CHASE. C-H-A-S-E.

11:35:21 23   **DIRECT EXAMINATION**

11:35:26 24   BY MR. KRISHNAN:

11:35:26 25   Q.   GOOD MORNING, DR. CHASE.

11:35:28 1   A.   GOOD MORNING.

11:35:28 2   Q.   LET ME JUST CLEAR UP ONE THING AT THE BEGINNING.

11:35:31 3   YOU'RE AWARE OF COURSE THAT THERE ARE COPYRIGHT AND PATENT

11:35:36 4   CLAIMS IN THIS LAWSUIT?

11:35:37 5   A.   YES.

11:35:37 6   Q.   AND YOU UNDERSTAND THAT YOU ARE HERE TO TALK ABOUT THE

11:35:40 7   PATENT CLAIMS AND NOT ABOUT ANYTHING RELATED TO THE COPYRIGHT;

11:35:43 8   RIGHT?

11:35:43 9   A.   YES, JUST THE PATENT CLAIMS.

11:35:45 10   Q.   OKAY. GREAT. THANK YOU.

11:35:47 11   CAN YOU PLEASE BRIEFLY DESCRIBE YOUR -- WELL, FIRST, WHY

11:35:52 12   DON'T YOU PLEASE FIRST INTRODUCE YOURSELF TO THE JURY.

11:35:54 13   A.   SURE. I'M JEFF CHASE AND I'M A PROFESSOR OF COMPUTER

11:35:59 14   SCIENCE AT DUKE UNIVERSITY IN DURHAM, NORTH CAROLINA.

11:36:03 15   Q.   CAN YOU PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL

11:36:05 16   BACKGROUND?

11:36:06 17   A.   I STARTED OUT STUDYING MATHEMATICS AND COMPUTER SCIENCE AT

11:36:11 18   DARTMOUTH COLLEGE. AND I GOT A BACHELOR'S THERE IN 1985.

11:36:16 19   AND I WORKED FOR A FEW YEARS AND THEN I WENT TO THE

11:36:18 20   UNIVERSITY OF WASHINGTON IN SEATTLE, AND I GOT A PH.D. IN

11:36:23 21   COMPUTER SCIENCE THERE IN 1995.

11:36:24 22   Q.   OKAY. HOW LONG HAVE YOU BEEN A PROFESSOR AT DUKE

11:36:28 23   UNIVERSITY?

11:36:28 24   A.   IT WILL BE 22 YEARS IN JANUARY.

11:36:30 25   Q.   AND WHAT ARE YOUR RESPONSIBILITIES AT DUKE?

11:36:33 1   A.   WELL, OF COURSE I TEACH CLASSES AND I CONDUCT RESEARCH. I

11:36:37 2   HAVE A TEAM THAT'S FUNDED MOSTLY BY THE U.S. NATIONAL SCIENCE

11:36:42 3   FOUNDATION AND DO COMPUTER SYSTEMS RESEARCH.

11:36:44 4   Q.   WHAT TYPES OF CLASSES DO YOU TEACH?

11:36:46 5   A.   I TEACH COURSES FOR UNDERGRADUATE STUDENTS AND FOR

11:36:49 6   GRADUATE STUDENTS IN OPERATING SYSTEMS, DISTRIBUTED SYSTEMS AND

11:36:54 7   SOMETIMES NETWORKING.

11:36:55 8   Q.   AND WHAT'S YOUR FIELD OF RESEARCH?

11:36:57 9   A.   MOST OF MY RESEARCH DEALS WITH SERVER AND NETWORK

11:37:04 10   INFRASTRUCTURES FOR NETWORK SYSTEMS.

11:37:05 11   Q.   ROUGHLY HOW MANY PAPERS HAVE YOU PUBLISHED IN THE AREA OF

11:37:09 12   COMPUTER SCIENCE AND NETWORKING?

11:37:10 13   A.   MORE THAN 100.

11:37:12 14   Q.   DOES ANY OF YOUR WORK RELATE TO CLI'S?

11:37:15 15   A.   SURE. CLI'S ARE QUITE COMMON. WE BUILD SOFTWARE IN MY

11:37:20 16   RESEARCH, AND SOME OF THOSE SOFTWARE SYSTEMS USE CLI'S, WHICH

11:37:25 17   WE THEN ED. AND IT'S A TOPIC THAT WE TEACH IN THE OPERATING

11:37:31 18   SYSTEMS CLASS TO UNDERGRADUATES.

11:37:32 19   Q.   PUTTING ASIDE YOUR WORK AT DUKE UNIVERSITY, WHAT OTHER

11:37:36 20   PROFESSIONAL ROLES DO YOU HAVE IN THE AREAS OF COMPUTER SCIENCE

11:37:40 21   AND NETWORKING?

11:37:40 22   A.   WELL, I HAVE SOME EDITORIAL ROLES. I SERVE ON THE

11:37:44 23   EDITORIAL BOARD FOR ACM RESEARCH HIGHLIGHTS, WHICH PUBLISHES

11:37:49 24   NOTABLE COMPUTER SCIENCE RESEARCH FROM ACROSS COMPUTER SCIENCE.

11:37:53 25   AND I HAVE, JUST IN THE LAST FEW YEARS, I'VE SERVED ON

11:37:57 1   EDITORIAL COMMITTEES FOR THE PREMIERE RESEARCH CONFERENCES IN

11:38:02 2   OPERATING SYSTEMS, NETWORKING, NETWORK SYSTEMS AND CLOUD

11:38:07 3   COMPUTING, AND THOSE EVER ARE THE CONFERENCES CALLED OSDI,

11:38:11 4   NSDI, SIGCOMM, AND SOCC.

11:38:16 5   Q.   DO YOU HAVE ANY PATENTS IN THE FIELDS OF COMPUTER SCIENCE

11:38:20 6   OR NETWORKING?

11:38:21 7   A.   I'M A NAMED INVENTOR ON 11 U.S. PATENTS.

11:38:24 8   Q.   OKAY. I WOULD LIKE TO TENDER, YOUR HONOR, AT THIS POINT,

11:38:27 9   DR. CHASE AS AN EXPERT IN THE FIELD OF NETWORKING AND COMPUTER

11:38:31 10   SCIENCE?

11:38:32 11   THE COURT: ANY OBJECTION, MR. JAFFE?

11:38:34 12   MR. JAFFE: NO OBJECTION.

11:38:35 13   THE COURT: THE WITNESS MAY TESTIFY AS DESIGNATED.

11:38:39 14   BY MR. KRISHNAN:

11:38:39 15   Q.   DR. CHASE, DID YOU PREPARE ANY SLIDES IN CONNECTION WITH

11:38:43 16   YOUR TESTIMONY TODAY?

11:38:44 17   A.   YES, I DID.

11:38:46 18   Q.   NOW WHAT WERE YOU ASKED TO DO FOR THIS CASE?

11:38:49 19   A.   WELL, AGAIN, MY TESTIMONY DEALS WITH THE QUESTION OF

11:38:54 20   WHETHER ARISTA INFRINGES CISCO'S PATENT, THE '526 PATENT.

11:38:59 21   Q.   OKAY. AND WHAT MATERIALS DID YOU CONSIDER WHEN PERFORMING

11:39:03 22   THAT ANALYSIS?

11:39:04 23   A.   SO I WAS ASKED TO LOOK AT THE PATENT AND THE COURT'S CLAIM

11:39:10 24   CONSTRUCTION RELATING TO THE PATENT. AND I WAS, OF COURSE,

11:39:15 25   ASKED TO EVALUATE THE INFRINGEMENT OPINIONS OF CISCO'S EXPERT,

11:39:21 1   DOCTOR KEVIN JEFFAY, SO I LOOKED AT HIS REPORT.

11:39:27 2   I LOOKED AT SOME MATERIALS FROM ARISTA PERTAINING TO ITS

11:39:30 3   EOS SYSTEM DOCUMENTS, SOURCE CODE, A LOT OF SOURCE CODE, AND I

11:39:35 4   LOOKED AT DEPOSITION TESTIMONY FROM THE INVENTORS, AND ALSO

11:39:41 5   SOME OF THE ARISTA PEOPLE.

11:39:43 6   SO IN GENERAL, I CONSIDERED EVERYTHING THAT CISCO'S

11:39:45 7   EXPERT, DR. JEFFAY CONSIDERED, AND SOME ADDITIONAL SOURCE CODE

11:39:50 8   ANALYSIS.

11:39:51 9   Q.   OKAY. AND DID YOU ARRIVE AT ANY CONCLUSIONS, AS A RESULT

11:39:54 10   OF YOUR ANALYSIS?

11:39:56 11   A.   I DID.

11:39:56 12   Q.   AND WHAT WAS THE CONCLUSION THAT YOU ARRIVED AT?

11:39:59 13   A.   MY CONCLUSION IS THAT ARISTA DOES NOT INFRINGE CISCO'S

11:40:02 14   '526 PATENT.

11:40:03 15   Q.   OKAY. COULD WE PLEASE PULL UP SLIDE 2 FROM DR. CHASE'S

11:40:10 16   PRESENTATION.

11:40:13 17   WHAT ARE THE BASIS FOR YOUR CONCLUSION THAT THE ARISTA EOS

11:40:18 18   PRODUCTS DON'T INFRINGE THE '526 PATENT?

11:40:22 19   A.   WELL, THERE ARE REALLY TWO THAT I WANT TO FOCUS ON TODAY,

11:40:27 20   AND THEY ARE ON THE SLIDE.

11:40:29 21   THE FIRST IS THE EOS, THE ARISTA SOFTWARE ELEMENTS CALLED

11:40:32 22   AGENTS, DO NOT QUALIFY AS MANAGEMENT PROGRAMS UNDER THE '526

11:40:37 23   PATENT.

11:40:37 24   AND IS THAT EOS ASSIGNS WHAT IS CALLED THE COMMAND ACTION

11:40:43 25   VALUES ON THE COMMAND LEVEL AND NOT ON THE WORD LEVEL AS

11:40:46 1   REQUIRED BY THE PATENT.

11:40:47 2   Q.   OKAY. LET'S GO TO SLIDE THREE, PLEASE.

11:40:51 3   WHAT IS THE CONSEQUENCE OF YOUR CONCLUSIONS WITH RESPECT

11:40:54 4   TO THE ISSUE OF INFRINGEMENT.

11:40:56 5   A.   RIGHT. SO IF THE JURY FINDS THAT I'M RIGHT ABOUT THOSE

11:40:59 6   THINGS, THEN THAT WOULD MEAN THAT THREE OF THE REQUIRED SIX

11:41:03 7   ELEMENTS OF THE ASSERTED CLAIM ONE, WOULD NOT BE MET. AND IF

11:41:09 8   EVEN ONE OF THOSE ELEMENTS IS NOT MET, THEN THAT'S SUFFICIENT

11:41:13 9   TO FIND THAT ARISTA DOES NOT INFRINGE THE PATENT.

11:41:15 10   Q.   OKAY. ON SLIDE 3 HERE, WE ARE LOOKING AT LANGUAGE FROM

11:41:20 11   CLAIM ONE OF THE PATENT. CISCO HAS ALSO ASSERTED CLAIM 14 OF

11:41:27 12   THE SAME PATENT AGAINST ARISTA. HOW DOES YOUR ANALYSIS DIFFER

11:41:30 13   BETWEEN CLAIMS 1 AND 14?

11:41:32 14   A.   WELL, IT'S THE SAME. ALL OF THESE REQUIREMENTS ARE

11:41:36 15   PRESENT IN CLAIM 14 AS WELL, USING THE SAME LANGUAGE. SO LIKE

11:41:41 16   DR. JEFFAY, I ANALYZE BOTH CLAIMS TOGETHER.

11:41:44 17   Q.   OKAY. LET'S GO FIRST TO YOUR FIRST CONCLUSION THAT THE

11:41:51 18   EOS AGENTS ARE NOT MANAGEMENT PROGRAMS.

11:41:53 19   AND ACTUALLY, COULD WE GO TO SLIDE 5, PLEASE. WE ARE

11:41:59 20   LOOKING HERE AT A MODIFIED VERSION OF FIGURE 1 OF THE PATENT.

11:42:04 21   COULD YOU PLEASE EXPLAIN HOW IT'S BEEN MODIFIED?

11:42:07 22   A.   ALL I'VE DONE IS THIS GENTLEMAN IN THE BOTTOM LEFT HERE

11:42:11 23   WHO IS INTERACTING WITH THE SYSTEM THROUGH A KEYBOARD AND A

11:42:14 24   SCREEN.

11:42:16 25   Q.   AND IN THE PICTURE THERE'S A LARGE BOX, IT'S THE LARGEST

11:42:19 1   BOX ON THE SCREEN AND IT HAS AN ARROW POINTING INTO IT. AT THE

11:42:23 2   TOP IT'S TABLED 10. WHAT IS THAT BOX?

11:42:26 3   A.   THE OUTER BOX LABELED 10 IS SUPPOSED TO REPRESENT A

11:42:28 4   COMPUTER SYSTEM LIKE YOUR PERSONAL COMPUTER.

11:42:34 5   Q.   OKAY. COULD WE ADVANCE THE SLIDE, PLEASE. WHAT JUST

11:42:43 6   HAPPENED THERE?

11:42:44 7   A.   THIS BOX LABELED 12 IS THE USER INPUT INTERFACE. IT

11:42:47 8   ALLOWS THE USER TO INTERACT WITH THE USER THROUGH THE KEYBOARD

11:42:49 9   TO THE SCREEN BY TYPING COMMANDS.

11:42:50 10 Q.   COULD WE ADVANCE THE SLIDE, PLEASE. AND WHAT ARE WE SHOWN

11:42:53 11 NOW?

11:42:54 12 A.   OVER HERE ON THE RIGHT-HAND ARE PROGRAMS THAT ARE IN THE

11:42:56 13 SYSTEM OR ADJACENT TO THE SYSTEM THAT THE USER MIGHT WANT TO

11:43:01 14 INTERACT WITH BY TYPING COMMANDS.

11:43:03 15 Q.   LET'S ADVANCE THE SLIDE. AND WHAT JUST HAPPENED THERE?

11:43:10 16 A.   SO IF THE USER TYPES A COMMAND, IT ENTERS THAT WORD INTO

11:43:14 17 THE BOX. AND THAT'S WHAT WE CALL THE GENERIC COMMAND UNDER THE

11:43:17 18 LANGUAGE OF THE PATENT.

11:43:17 19 Q.   OKAY. LET'S ADVANCE THE SLIDE.

11:43:23 20   CAN YOU DESCRIBE WHAT JUST HAPPENED THERE?

11:43:27 21 A.   SO THE GENERIC COMMAND GOES INTO THIS BOX CALLED PARSER.

11:43:33 22 AND THE PARSER LOOKS AT EACH WORD OF THE COMMAND TO UNDERSTAND

11:43:37 23 WHAT THE COMMAND MEANS, AND ULTIMATELY TO TRANSLATE IT TO

11:43:38 24 WHAT'S CALLED A PRESCRIBED COMMAND.

11:43:40 25 Q.   LET'S ADVANCE THE SLIDE. AND FINALLY, WHAT HAPPENED

11:43:44 1   THERE?

11:43:44 2   A.   SO THE PRESCRIBED COMMAND IS IN A FORMAT THAT CAN BE

11:43:47 3   UNDERSTOOD BY ONE OF THESE MANAGEMENT PROGRAMS. A SELECTED

11:43:51 4   MANAGEMENT PROGRAM.

11:43:52 5   SO THE PRESCRIBED COMMAND IS ISSUED TO THE MANAGEMENT

11:43:56 6   PROGRAM. AND THIS IS REALLY THE MOST IMPORTANT PART, THE

11:43:59 7   MANAGEMENT PROGRAM EXECUTES THE PRESCRIBED COMMAND. THE

11:44:01 8   MANAGEMENT PROGRAM MUST EXECUTE THE PRESCRIBED COMMAND.

11:44:05 9   Q.   OKAY. LET'S LOOK AT SLIDE 6. ON SLIDE 6 WE ARE SEEING

11:44:09 10   SOME OF THE CLAIM LANGUAGE FROM THE PATENT HIGHLIGHTED AS WELL

11:44:12 11   AS THE COURT'S CLAIM CONSTRUCTION.

11:44:15 12   WHAT'S THE SIGNIFICANCE OF THIS TEXT?

11:44:18 13   A.   WELL, THIS IS JUST THE LANGUAGE THAT, OF COURSE WHAT I'M

11:44:24 14   SAYING IS THAT THE MANAGEMENT PROGRAMS MUST EXECUTE THE

11:44:28 15   PRESCRIBED COMMAND.

11:44:28 16   Q.   OKAY. LET'S GO TO SLIDE 7, PLEASE. WE ARE SEEING HERE AN

11:44:32 17   EXCERPT OF TESTIMONY FROM DR. JEFFAY FROM TRIAL, AND LET ME

11:44:37 18   JUST READ THE CITE INTO THE RECORD. THIS IS THE TRIAL

11:44:40 19   TRANSCRIPT AT PAGE 1490, LINES 3 TO 5.

11:44:45 20   WHAT'S THE SIGNIFICANCE OF THIS TESTIMONY?

11:44:48 21   A.   WELL, DR. JEFFAY IS CISCO EXPERT ON THIS PATENT MATTER AND

11:44:52 22   HE TESTIFIED LAST WEEK THAT HE AGREES THAT THE MANAGEMENT

11:44:56 23   PROGRAMS MUST EXECUTE THE PRESCRIBED COMMANDS.

11:44:59 24   Q.   OKAY. LET'S GO TO SLIDE 8, PLEASE. NOW THIS IS A

11:45:04 25   MODIFIED VERSION OF A SLIDE FROM DR. JEFFAY'S DECK, IT WAS

11:45:09 1   SLIDE 21 IN THE DR. JEFFAY'S DECK, COULD YOU PLEASE EXPLAIN

11:45:14 2   WHAT WE ARE LOOKING AT?

11:45:15 3   A.   WELL, THIS IS A DEPICTION OF ARISTA'S SYSTEM CALMED EOS.

11:45:21 4   AND THIS IS A SLIDE THAT DR. JEFFAY USED. AND IT HAS OVER HERE

11:45:24 5   ON THE LEFT A PARSER TRANSLATOR FOR CLI, A COMMAND-LINE

11:45:27 6   INTERFACE, AND IT HAS OVER HERE ON THE RIGHT, SOME PROGRAMS

11:45:32 7   WHICH IN EOS ARE CALLED THE AGENTS, THAT DR. JEFFAY HAS ACCUSED

11:45:37 8   OF MANAGEMENT PROGRAMS UNDER THE PATENT.

11:45:41 9   AND I DISAGREE WITH THAT CONCLUSION, SO I'VE CROSSED THAT

11:45:46 10   PART OUT. AND THAT'S THE ONLY CHANGE TO THE SLIDE.

11:45:48 11   Q.   OKAY. LET'S GO TO SLIDE 9, PLEASE.

11:45:50 12   WE ARE LOOKING NOW AT AN EXCERPT CALLED TX 599 THAT WAS

11:45:56 13   PRESENTED WITH DR. JEFFAY'S TESTIMONY. CAN YOU PLEASE REMIND

11:45:59 14   THE JURY WHAT THIS EXHIBIT IS?

11:46:02 15   A.   WELL, THIS IS A LIST THAT DR. JEFFAY PRESENTED THAT IS A

11:46:07 16   LIST OF 77 COMMANDS FROM THE EOS SYSTEM THAT HE ACCUSES AS

11:46:13 17   GENERIC COMMANDS UNDER THE '526 PATENT. AND THOSE ARE THE

11:46:16 18   COMMANDS THAT A USER CAN TYPE INTO EOS.

11:46:20 19   AND OVER ON THE RIGHT-HAND COLUMN ARE CORRESPONDING

11:46:23 20   PRESCRIBED COMMANDS.

11:46:25 21   Q.   OKAY. AND LET'S GO ON TO SLIDE TEN, PLEASE. AND THIS

11:46:31 22   SLIDE SHOWS SOME OF THE PRESCRIBED COMMANDS COMING OUT OF THE

11:46:35 23   CLI RIGHT THERE. WHAT ARE YOU TRYING TO DEPICT THERE?

11:46:38 24   A.   WELL, I'VE JUST MODIFIED DR. JEFFAY'S SLIDE TO SHOW THAT

11:46:43 25   THE PRESCRIBED COMMANDS ARE ACTUALLY OUTPUT FROM THE CLI, THE

11:46:47 1   PARSER AND TRANSLATOR, BASED ON THE INPUT COMMANDS, THE

11:46:53 2   CORRESPONDING GENERIC COMMANDS, AND DR. JEFFAY AND I AGREE ON

11:46:59 3   THAT.

11:46:59 4   Q.   SO ACCORDING TO DR. JEFFAY, WHAT HAPPENS NEXT TO THOSE

11:47:02 5   PRESCRIBED COMMANDS?

11:47:03 6   A.   WELL, DR. JEFFAY SAYS THAT THOSE PRESCRIBED COMMANDS THEN

11:47:06 7   TRAVEL THROUGH THIS YELLOW CIRCLE CALLED SYSDB AND ARRIVE AT

11:47:10 8   THE AGENTS ON THE RIGHT-HAND SIDE. AND HE SAID THAT THE AGENTS

11:47:13 9   THEN EXECUTE THE PRESCRIBED COMMANDS.

11:47:15 10   Q.   OKAY. LET'S GO TO SLIDE 11, PLEASE. AND WHAT ARE YOU

11:47:21 11   SHOWING HERE?

11:47:21 12   A.   RIGHT. SO THIS JUST SHOWS THAT THE, MY OPINION IS THAT

11:47:25 13   THE AGENTS DO NOT EXECUTE THESE PRESCRIBED COMMANDS, ACTUALLY

11:47:29 14   IT IS A PART OF THE CLI CALLED CLI PLUG-INS THAT EXECUTE THESE

11:47:34 15   PRESCRIBED COMMANDS OVER HERE ON THE LEFT AND NOT IN THE

11:47:38 16   ACCUSED MANAGEMENT PROGRAMS, THE AGENTS ON THE RIGHT.

11:47:41 17   Q.   AND HOW DO YOU KNOW THAT THAT'S TRUE?

11:47:43 18   A.   WELL, THE IDEA THAT THESE PRESCRIBED COMMANDS WOULD PASS

11:47:48 19   THROUGH THE SYSDB IS INCOMPATIBLE WITH MY UNDERSTANDING OF THE

11:47:53 20   SYSDB BASED ON ARISTA'S DOCUMENTS AND FROM LOOKING AT SOURCE

11:48:01 21   CODE.

11:48:01 22   AND ALSO I LOOKED AT SOURCE CODE FOR SIX OF THOSE

11:48:03 23   PRESCRIBED COMMANDS, AND SOURCE CODE CITED BY DR. JEFFAY TO

11:48:08 24   CONFIRM THAT VIEW.

11:48:09 25   Q.   OKAY. NOW JUST TO CLARIFY ONE ISSUE, DR. JEFFAY HAS 77

11:48:14 1   PRESCRIBED COMMANDS ON HIS LIST. DID YOU PROVIDE IN YOUR

11:48:17 2   EXPERT REPORT THE ANALYSIS FOR ALL 77 OF THOSE COMMANDS?

11:48:21 3   A.   NO, I JUST -- I CHOSE SIX OF THEM TO CONFIRM MY

11:48:27 4   UNDERSTANDING AND I PRESENTED A FAIRLY LENGTHY, A 23-PAGE

11:48:33 5   ANALYSIS DETAILED ANALYSIS FOR THOSE SIX WITH MY REPORT AS AN

11:48:38 6   APPENDIX.

11:48:39 7   Q.   AS BETWEEN YOU AND DR. JEFFAY, WHO BEARS THE BURDEN OF

11:48:43 8   PROOF ON THE ISSUE OF INFRINGEMENT?

11:48:44 9   A.   WELL, DR. JEFFAY WAS, IN HIS REPORT AND IN HIS TESTIMONY,

11:48:50 10   WAS ARGUING THAT ARISTA DOES INFRINGE THE PATENT AND IT IS HIS

11:48:54 11   BURDEN TO PRESENT THE ANALYSIS TO SHOW THAT THAT IS THE CASE.

11:48:58 12   Q.   OKAY. AND FOR WHICH OF THESE 77 COMMANDS DID DR. JEFFAY

11:49:05 13   PRESENT SOURCE CODE ANALYSIS IN HIS REPORT?

11:49:07 14   A.   I BELIEVE THAT DR. JEFFAY TESTIFIED THAT HE MERELY TOOK

11:49:12 15   THE LIST FROM CISCO'S INFRINGEMENT CONTENTIONS AND INCLUDED IT,

11:49:18 16   AS HE DID NOT WORK ON, AND INCLUDED IT AS AN APPENDIX IN HIS

11:49:23 17   REPORT.

11:49:24 18   HE DID NOT PRESENT ANY ADDITIONAL SOURCE CODE ANALYSIS

11:49:27 19   PERTAINING TO THOSE PRESCRIBED COMMANDS IN HIS REPORT OR IN HIS

11:49:30 20   TESTIMONY.

11:49:30 21   Q.   NOW ARE YOU AWARE OF ANY COMMANDS FROM DR. JEFFAY'S LIST

11:49:33 22   OF 77 THAT IS ARE EXECUTED BY EOS AGENTS SUCH AS THOSE SHOWN ON

11:49:41 23   THE RIGHT-HAND SIDE OF SLIDE 11 HERE?

11:49:43 24   A.   NO, I'M NOT.

11:49:44 25   Q.   OKAY. LET'S GO ON TO SLIDE 12, PLEASE.

11:49:48   1   SO DR. CHASE, IF YOU ARE CORRECT ABOUT YOUR OPINION THAT

11:49:54   2   EOS AGENTS DO NOT EXECUTE PRESCRIBED COMMANDS, WHAT IS THE

11:49:58   3   CONSEQUENCE OF THAT WITH RESPECT TO THE ISSUE OF INFRINGEMENT.

11:50:02   4   A.   WELL, THAT WOULD MEAN THAT THE FIRST AND LAST CLAIM

11:50:06   5   ELEMENTS OF THE CLAIM ONE AND ALSO OF CLAIM 14 ARE NOT MET.

11:50:13   6   AND AGAIN, IF ONLY EVEN ONE OF THOSE CLAIM ELEMENTS IS NOT

11:50:16   7   MET, THAT'S ENOUGH TO SHOW THAT THE PATENT IS NOT INFRINGED.

11:50:21   8   MR. KRISHNAN: YOUR HONOR, I NOTE THAT WE HAVE ABOUT

11:50:23   9   TEN MINUTES LEFT BEFORE NOON. I PROBABLY HAVE ABOUT 20 MINUTES

11:50:27 10   OF MATERIAL, SO I'M --

11:50:28 11   THE COURT: WELL, LET'S JUST USE THE TEN MINUTES AND

11:50:31 12   THEN WE WILL --

11:50:32 13   MR. KRISHNAN: FAIR ENOUGH. I JUST WANTED TO ASK.

11:50:35 14   Q.   LET'S GO ON TO SLIDE 14.

11:50:38 15   SO HERE WE ARE MOVING ON TO YOUR SECOND POINT THAT EOS

11:50:40 16   DOES NOT ASSIGN COMMAND ACTION VALUES TO EVERY WORD IN A

11:50:44 17   COMMAND.

11:50:45 18   AND I TAKE IT AGAIN, THIS IS YOUR SECOND BASIS FOR

11:50:47 19   NONINFRINGEMENT; IS THAT RIGHT?

11:50:48 20   A.   RIGHT. SO WE ARE MOVING ON TO A NEW TOPIC AND TALKING

11:50:52 21   ABOUT HOW THE PARSER WORKS NOW.

11:50:54 22   Q.   OKAY. AND WHEN YOU SAY EOS DOES NOT ASSIGN COMMAND ACTION

11:50:58 23   VALUES TO EVERY WORD IN A COMMAND, BRIEFLY, WHAT'S THE CLAIM

11:51:03 24   REQUIREMENT THAT WE ARE TALKING ABOUT?

11:51:05 25   A.   WELL, THE CLAIM REQUIREMENT IS THAT EVERY WORD IN A

11:51:08 1   COMMAND HAS TO HAVE A CORRESPONDING, WHAT'S CALLED A COMMAND

11:51:13 2   ACTION VALUE, THAT IS AN ACTION TO TAKE WHEN THAT WORD IS SEEN,

11:51:18 3   POTENTIALLY.

11:51:20 4   AND THE ARISTA SYSTEM DOES NOT HAVE THAT.

11:51:22 5   Q.   OKAY. LET'S GO TO SLIDE 14, PLEASE.

11:51:26 6   CAN YOU -- LET ME JUST DESCRIBE IT VERY BRIEFLY FOR THE

11:51:30 7   RECORD.

11:51:31 8   IT HAS TWO DEPICTIONS IN IT, ONE AT THE TOP THAT SAYS "526

11:51:37 9   EXAMPLE," AND ONE AT THE BOTTOM THAT SAYS "ARISTA EOS." WHAT

11:51:40 10   ARE YOU DEPICTING HERE?

11:51:41 11   A.   OKAY. SO YEAH, THIS IS MY PICTURE, IT'S NOT IN THE

11:51:46 12   PATENT. WE ARE GOING TO GO INTO SOME OF THE PICTURES IN THE

11:51:48 13   PATENT, BUT REALLY, ALL YOU REALLY NEED TO UNDERSTAND TO

11:51:52 14   UNDERSTAND THIS POINT IS WHAT'S IN THIS PICTURE.

11:51:56 15   AND ON THE TOP IT'S A DEPICTION OF A VALID COMMAND, AN

11:52:00 16   EXAMPLE VALID COMMAND FOR THE, IT'S ACTUALLY USED AS EXAMPLES

11:52:06 17   IN THE 526, GET TCP CONNECTION INFO.

11:52:09 18   AND WHAT'S GOING TO HAPPEN WHEN THE PARSER GETS THIS

11:52:12 19   COMMAND IS IT WILL LOOK AT EACH WORD. AND EACH WORD ALSO HAS

11:52:17 20   ASSOCIATED WITH IT, ONE OF THESE THINGS LABELED CK, THAT MEANS

11:52:25 21   COMMAND KEY. IT'S A FORM OF COMMAND ACTION VALUE IN THE

11:52:30 22   PATENT. AND THERE'S A CK FOR EACH WORD.

11:52:31 23   AND ON THE BOTTOM, IT SHOWS FOR ARISTA COMMANDS, FOR

11:52:36 24   EXAMPLE "SHOW OPENFLOW, FLOWS," THERE'S NO ACTION ASSOCIATED

11:52:40 25   WITH EVERY WORD, THERE ARE ONLY ACTIONS ASSOCIATED WITH EACH

11:52:44 1   COMPLETE COMMAND, NOT WITH EVERY WORD AS THE PATENT REQUIRES.

11:52:47 2   Q.   OKAY. AND WHY WOULD ONE CONSTRUCT A SYSTEM THAT LOOKS

11:52:55 3   LIKE THE ONE IN THE '526 PATENT?

11:52:57 4   A.   WELL, THIS IDEA OF HAVING AN ACTION FOR EVERY WORD IS

11:53:00 5   ACTUALLY VERY UNUSUAL. I'M NOT FAMILIAR WITH ANY OTHER PARSING

11:53:07 6   SYSTEMS THAT HAVE THIS. AND IT'S THERE FOR A VERY PARTICULAR

11:53:12 7   REASON.

11:53:12 8   IT MEANS IF THE PARSER ENCOUNTERS A COMMAND THAT HAS

11:53:16 9   MISSING WORDS OR INVALID WORDS, IT'S ONLY PARTIALLY VALID, THEN

11:53:21 10   IT HAS AN ACTION IT CAN TAKE.

11:53:23 11   IT GETS AS FAR AS IT CAN IN THE COMMAND, AND THEN IF IT

11:53:26 12   FINDS SOMETHING IT CAN'T UNDERSTAND, THEN IT HAS AN OBJECTION

11:53:29 13   ASSOCIATED WITH THE LAST VALID WORD AND IT TAKE THAT ACTION.

11:53:32 14   Q.   HOW IS THE EOS EXAMPLE DIFFERENT FROM THAT?

11:53:34 15   A.   WELL, IN THE EOS EXAMPLE, IF YOU ENCOUNTER SOMETHING

11:53:38 16   INVALID WHILE YOU ARE RUNNING THROUGH A COMMAND, THERE'S NO

11:53:40 17   ACTION TO TAKE OTHER THAN TO DELIVER AN ERROR MESSAGE. BECAUSE

11:53:44 18   IT ONLY HAS AN ACTION ASSOCIATED WITH COMPLETE AND CORRECT

11:53:47 19   COMMANDS.

11:53:48 20   Q.   OKAY. LET'S GO TO SLIDE 15 PLEASE. WHAT ARE YOU

11:53:57 21   DEPICTING HERE IN THIS SLIDE, IT HAS THE COURT'S CLAIM

11:54:00 22   CONSTRUCTION AND FIGURE 2 OF THE PATENT WITH COLOR CODING?

11:54:03 23   A.   NOW WE ARE JUST GOING INTO MORE DETAILED POINT THAN WHAT I

11:54:08 24   WAS JUST TALKING ABOUT USING THE COURT'S CONSTRUCTION AND A

11:54:10 25   FIGURE OF THE PATENT THAT ILLUSTRATES THIS COMMAND PARSE TREE.

11:54:12   1   SO THIS IS LANGUAGE FROM THE COURT'S CONSTRUCTION THAT

11:54:14   2   SHOWS THAT EACH GENERIC COMMAND COMPONENT, THAT'S LANGUAGE THAT

11:54:17   3   MEANS A COMMAND WORD. EACH COMMAND WORD HAS TO HAVE A COMMAND

11:54:22   4   ACTION VALUE.

11:54:23   5   AND ON THE RIGHT, WE HAVE A FIGURE 2 FROM THE PATENT,

11:54:27   6   PORTION OF FIGURE 2, WHICH DEPICTS AN EXAMPLE OF THE 526, IT'S

11:54:32   7   AN EMBODIMENT OF THE PATENT.

11:54:34   8   AND YOU SEE THAT IT'S A DATA STRUCTURE. AND EACH ELEMENT

11:54:38   9   OF THIS DATA STRUCTURE THAT HAS THESE GREEN THINGS AND THESE

11:54:42 10   YELLOW THINGS, OKAY. THE GREEN THINGS ARE LABELED T, THAT

11:54:46 11   MEANS TOKEN, THAT'S A REPRESENTATION OF A COMMAND WORD.

11:54:49 12   AND THE YELLOW THINGS ARE THOSE CK'S, THAT STANDS FOR

11:54:54 13   COMMAND KEY, AS I WAS TALKING ABOUT BEFORE, IT'S A KIND OF

11:54:58 14   COMMAND ACTION VALUE.

11:54:58 15   AND THEY ALSO APPEAR TOGETHER, THE GREEN AND THE YELLOW.

11:55:01 16   WHENEVER THERE'S A T, A TOKEN, A WORD, THERE'S A CORRESPONDING

11:55:04 17   CK, A COMMAND KEY. THEY ARE ALWAYS IN PAIRS. EVERY WORD IN

11:55:09 18   THE TREE HAS A CORRESPONDING CK OR COMMAND ACTION VALUE.

11:55:14 19   Q.   OKAY. LET'S GO TO SLIDE 16, PLEASE.

11:55:20 20   AND THIS CONTAINS ON IT SOME TEXT FROM COLUMN 4, LINES 37

11:55:24 21   TO 53 OF THE PATENT AS WELL AS FIGURE 2.

11:55:28 22   WHAT'S THE SIGNIFICANCE OF THIS TEXT?

11:55:30 23   A.   WELL, THIS IS ONE OF A COUPLE OF PLACES IN THE PATENT

11:55:33 24   WHERE IT TALKS ABOUT WHY THIS PARTICULAR CLAIM REQUIREMENT IS

11:55:38 25   IMPORTANT.

11:55:38 1   AND WHAT IT'S DOING IS IT'S SAYING THAT IT'S GOING TO USE

11:55:41 2 AN EXAMPLE OF AN INCORRECT COMMAND TO SHOW HOW THIS PROPERTY

11:55:45 3 ALLOWS THE PARSER TO TAKE AN ACTION, EVEN FOR A PARTIALLY VALID

11:55:50 4 COMMAND.

11:55:50 5 Q.   OKAY. AND WHAT'S THE EXAMPLE GIVEN HERE OF AN INCOMPLETE

11:55:55 6 COMMAND?

11:55:55 7 A.   WELL, IT'S THE COMMAND EXAMPLE, WHICH IT DESCRIBES IN

11:55:59 8 DETAIL IN THIS PARAGRAPH, AND WHICH WE WILL RUN THROUGH IN A

11:56:03 9 MOMENT, IS "GET UDP CONNECTION INFO." AND IT'S INVALID BECAUSE

11:56:07 10 THE SECOND WORD, "UDP," IS INVALID IN THAT COMMAND.

11:56:11 11 Q.   OKAY. AND DOES THAT EXAMPLE RELATE TO THE TREE SHOWN ON

11:56:15 12 THE RIGHT-HAND SIDE?

11:56:16 13 A.   YES.

11:56:21 14 Q.   LET'S GO ON TO SLIDE 17, PLEASE. NOW WHAT ARE YOU SHOWING

11:56:25 15 HERE?

11:56:25 16 A.   WELL, THIS IS THE SAME TREE, AND I'VE DRAWN THIS ONE, IT'S

11:56:29 17 THE SAME AS FIGURE 2 IN THE PATENT.

11:56:34 18   ALL I'VE DONE IS REPLACE THE TOKEN WHICH ARE NUMERIC

11:56:34 19 REPRESENTATIONS OF COMMAND WORDS, WITH THE CORRESPONDING

11:56:40 20 COMMAND WORDS, JUST SO WE CAN SEE THE WORDS IN THE TREE, AND

11:56:41 21 IT'S EASIER TO UNDERSTAND HOW IT WORKS.

11:56:44 22 Q.   OKAY. AND I WOULD LIKE TO -- I'M NOT SURE IF MR. DAHM

11:56:47 23 WILL BE ABLE TO DO THIS WITH HIS HIGHLIGHTING, BUT I WOULD LIKE

11:56:50 24 TO DRAW YOUR ATTENTION TO THE MIDDLE BRANCH OF THE TREE AND THE

11:56:53 25 WORDS GOING DOWN THAT BRANCH ARE "GET TCP CONNECTION INFO."

11:56:59   1   AND I WOULD LIKE YOU TO JUST EXPLAIN WHAT'S HAPPENING IN

11:57:04   2   THAT BRANCH OF THE TREE?

11:57:05   3   A.   SO "GET TCP CONNECTION INFO" IS A VALID COMMAND. AND THE

11:57:13   4   PATENT EXPLAINS HOW THIS EMBODIMENT OF THE SYSTEM WOULD WORK

11:57:19   5   FOR A VALID COMMAND.

11:57:22   6   AND WHAT IT DOES IS IT TAKES THE FIRST WORD OF THE

11:57:25   7   COMMAND, "GET," AND IT TRIES TO MATCH THE "GET" AGAINST THE TOP

11:57:27   8   ELEMENT. AND THERE'S A MATCH, THE "GET" IS THERE AND THERE'S A

11:57:30   9   CORRESPONDING COMMAND T6.

11:57:32 10   BUT THEN IT KEEPS GOING, IT TAKES THE SECOND WORD WHICH IS

11:57:36 11   "TCP," AND IT LOOKS IT'S THE ELEMENT THAT IS THE CHILD OF THE

11:57:38 12   "GET" IN THIS TREE, AND IT TRIES TO MATCH THE SECOND WORD

11:57:42 13   AGAINST THAT.

11:57:42 14   AND IT'S A MATCH. THERE'S A TCP, IN THERE. AND A

11:57:47 15   CORRESPONDING COMMAND KEY 7.

11:57:49 16   AND THEN IT JUST CONTINUES DOWN THIS BRANCH UNTIL IT GETS

11:57:51 17   TO THE END. AND IN THIS CASE, IT'S A VALID COMMAND THAT WILL

11:57:54 18   RUN ALL THE WAY DOWN, "GET TCP CONNECTION INFO," AND LAND AT

11:57:58 19   THIS COMMAND KEY 9, WHICH IS ENOUGH INFORMATION TO IDENTIFY A

11:58:04 20   PRESCRIBED COMMAND TO TRANSLATE THAT COMMAND INTO.

11:58:07 21   AND IT WILL ISSUE THAT PRESCRIBED COMMAND, AND IT WILL

11:58:09 22   FORGET ABOUT THE OTHER COMMAND KEYS.

11:58:11 23   Q.   OKAY. SO NOW LET'S GO ON TO SLIDE 18, PLEASE. AND WHAT

11:58:16 24   ARE WE SEEING HERE?

11:58:16 25   A.   SO THIS IS WHAT HAPPENS IF WE HAVE THE INVALID COMMAND

11:58:20   1   THAT WE TALKED ABOUT, "GET UDP CONNECTION INFO."

11:58:23   2   SO IN THIS CASE THE PARSER STARTS THE SAME WAY, IT HAS THE

11:58:28   3   SAME FIRST WORD, "GET." SO IT MATCHES THE FIRST WORD AGAINST

11:58:31   4   THE TOP ELEMENT THERE, AND IT FINDS IT.

11:58:33   5   BUT THEN THE SECOND WORD IS "UDP" INSTEAD OF "TCP." SO IT

11:58:38   6   GOES TO THAT CHILD ELEMENT OF "GET," IT TRIES TO MATCH THE UDP,

11:58:42   7   AND IT'S NOT THERE, ONLY TCP IS VALID. SO THAT'S WHY THERE'S

11:58:48   8   THAT X.

11:58:48   9   AND SO WHAT THE PARSER DOES, AS THE PATENT EXPLAINS IN

11:58:51   10   THIS EMBODIMENT, IS THAT IT GOES AND USES THE COMMAND KEY

11:58:55   11   ASSOCIATED WITH THE PREVIOUS WORD, THE VALID ONE, "GET." AND

11:58:59   12   IT GENERATES A PRESCRIBED COMMAND, AND IT EXECUTES, ISSUES THAT

11:59:03   13   TO A MANAGEMENT PROGRAM TO EXECUTE THE PRESCRIBED COMMAND

11:59:06   14   CORRESPONDING TO COMMAND KEY 6.

11:59:09   15   MR. KRISHNAN: JUST A COUPLE MORE QUESTIONS ON THIS

11:59:11   16   LINE, YOUR HONOR, THEN WE CAN PROBABLY TAKE A BREAK.

11:59:13   17   THE COURT: OKAY.

11:59:14   18 Q.   WHAT DO YOU MAKE OF THIS TYPE OF PARSING BEHAVIOR THAT

11:59:18   19   YOU'VE JUST PRESCRIBED?

11:59:19   20 A.   I WILL BE QUICK. I DON'T WANT TO KEEP ANYONE FROM LUNCH.

11:59:22   21   AS I SAID, IT'S VERY UNUSUAL, I HAVEN'T SEEN THIS BEFORE,

11:59:25   22   AND WHAT IT DOES IS IT ALLOWS THE PARSING SYSTEM TO ISSUE A

11:59:32   23   COMMAND, A PRESCRIBED COMMAND, EVEN FOR A COMMAND FROM A USER

11:59:36   24   THAT WAS INCORRECT.

11:59:38   25   SO IT'S NOT REALLY CLEAR WHAT THE USER HAD INTENDED HERE

CHASE DIRECT EXAM BY MR. KRISHNAN

11:59:41 1   BY TYPING THIS COMMAND. BUT THE SYSTEM IS GOING TO DO

11:59:44 2   SOMETHING ANYWAY, IT'S GOING TO INVOKE THIS MANAGEMENT PROGRAM,

11:59:47 3   AND IT'S GOING TO PASS IT SOMETHING THAT REFLECTS WHAT THE USER

11:59:51 4   TYPED UP TO THAT POINT.

11:59:53 5   AND THAT MANAGEMENT PROGRAM IS GOING TO DO SOMETHING, IT

11:59:56 6   MIGHT PROMPT FOR SOME MORE INFORMATION FROM THE USER OR IT MAKE

12:00:00 7   TAKE AN ACTION THAT MIGHT BE DIFFERENT FROM WHAT THE USER

12:00:03 8   INTENDED.

12:00:03 9   Q.   SO JUST TO BE CLEAR, HOW MUCH INFORMATION ABOUT THE USER'S

12:00:07 10   INPUT DOES THE PARSER HAVE AT THE POINT THAT IT EXECUTES THE

12:00:12 11   COMMAND HERE?

12:00:13 12   A.   ALL IT KNOWS AT THIS POINT IS THAT THE FIRST WORD "GET"

12:00:16 13   WAS VALID. AND THAT COMMAND KEY 6 IS THE COMMAND KEY IT WOULD

12:00:19 14   USE FOR ANYTHING THAT STARTS WITH GET, AND THEN IS INVALID OR

12:00:23 15   MISSING AFTER THAT.

12:00:24 16   Q.   OKAY. AND JUST AS A FINAL QUESTION, COULD YOU MAYBE USE

12:00:27 17   AN ANALOGY TO THE ENGLISH LANGUAGE TO PERHAPS CONVEY HOW THIS

12:00:33 18   TYPE OF PARSING BEHAVIOR OPERATES?

12:00:36 19   A.   SURE. SO THE EXAMPLE WOULD BE IF I SAID, IF I ISSUED A

12:00:39 20   COMMAND, GET ME A SODA, OKAY, IF YOU HEARD THE COMPLETE

12:00:44 21   COMMAND, IT WOULD BE TYPICAL FOR A PARSER, AFTER HEARING THE

12:00:46 22   COMPLETE COMMAND AND ONLY AFTER HEARING THE COMPLETE COMMAND TO

12:00:49 23   GO AND TAKE AN ACTION AND DO WHAT I WANTED.

12:00:51 24   BUT THIS IS SORT OF, LIKE I SAID, YOU KNOW, "GET," AND THE

12:00:55 25   PARSER DIDN'T UNDERSTAND WHAT I SAID OR WHAT I WANTED, BUT IT

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12:00:59   1        GOES TO DO SOMETHING ANYWAY.

12:01:02   2        Q.   OKAY.

12:01:02   3             MR. KRISHNAN:  AND GET ME A SODA MAY BE A GOOD TIME

12:01:04   4    TO BREAK FOR LUNCH, YOUR HONOR.

12:01:06   5             THE COURT:  OKAY.  THAT WAS A GOOD EXAMPLE.

12:01:09   6        ALL RIGHT.  LET'S TAKE OUR LUNCH BREAK AND WE WILL COME

12:01:11   7    BACK AT 1:00.

12:01:23   8             (RECESS FROM 12:01 P.M. UNTIL 1:00 P.M.)

01:05:18   9             THE COURT:  GOOD AFTERNOON, EVERYONE.  PLEASE BE SEATED.

01:05:20  10        WE ARE BACK ON THE RECORD.  DR. CHASE HAS JOINED US.

01:05:24  11        AND MR. KRISHNAN, WOULD YOU LIKE TO CONTINUE?

01:05:29  12             MR. KRISHNAN:  YES, THANK YOU, YOUR HONOR.

01:05:30  13             THE COURT:  ALL RIGHT.  GO AHEAD, PLEASE.

01:05:32  14      BY MR. KRISHNAN:

01:05:33  15        Q.   GOOD AFTERNOON, DR. CHASE.

01:05:35  16        A.   GOOD AFTERNOON.

01:05:35  17        Q.   BEFORE THE BREAK, WE WERE TALKING ABOUT THE REQUIREMENT OF

01:05:39  18    THE '526 PATENT THAT A COMMAND ACTION VALUE BE ASSIGNED TO

01:05:44  19    EVERY SINGLE COMMAND WORD.  AND I WOULD LIKE TO STAY ON THAT

01:05:47  20    TOPIC FOR JUST A LITTLE WHILE LONGER.

01:05:50  21        COULD WE PLEASE PULL UP TX 95.  COLUMN 4, LINES 37 TO 52.

01:05:58  22    THIS IS IN EVIDENCE.

01:06:00  23        SO THIS IS THE '526 PATENT.  AND IF WE COULD BLOW THAT UP.

01:06:04  24        THIS IS ACTUALLY THE SECTION OF THE PATENT WE WERE TALKING

01:06:08  25    ABOUT BEFORE THE BREAK THAT GIVES THE EXAMPLE OF THE INVALID
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01:06:14   1   COMMAND, "GET UDP CONNECTION INFO." DO YOU RECALL THAT?

01:06:18   2   A.   YES.

01:06:18   3   Q.   NOW IS THIS THE ONLY PLACE IN THE PATENT THAT TALKS ABOUT

01:06:22   4   THE IMPORTANCE OF BEING ABLE TO HANDLE INVALID COMMANDS?

01:06:27   5   A.   WELL, NO. ACTUALLY, THIS IS A RELATIVELY SHORT PATENT.

01:06:34   6   IT HAS A FEW PAGES OF TEXT, TWO FIGURES AND THE CLAIMS, A

01:06:38   7   COUPLE APPENDIXES. BUT THERE'S ANOTHER PLACE IN THE TEXT THAT

01:06:41   8   TALKS ABOUT THIS BEHAVIOR AND THERE'S A WHOLE FIGURE DEVOTED TO

01:06:45   9   IT.

01:06:45   10   Q.   OKAY. SO BEFORE WE GO ON, I JUST WANT TO READ THIS

01:06:48   11   CITATION AGAIN INTO THE RECORD IN CASE ANYONE WANTS TO TAKE

01:06:52   12   NOTES.

01:06:52   13   IT'S COLUMN 4, LINES 37 TO 52. THAT'S WHAT WE WERE JUST

01:06:56   14   LOOKING AT. AND NOW LET'S MOVE ON TO COLUMN 3, LINE 57 TO 61.

01:07:08   15   AND WHAT'S THE SIGNIFICANCE OF THIS SELECTION?

01:07:11   16   A.   WELL, THERE IT IS AGAIN. IF ONLY A PORTION OF THE GENERIC

01:07:15   17   COMMAND IS IDENTIFIED AS VALID, THE PARSER SELECTS THE COMMAND

01:07:18   18   KEY FOR THE LAST MATCHING TOKEN.

01:07:20   19   SO LIKE THE "GET ME A SODA," FOR EXAMPLE, WHERE I JUST

01:07:24   20   SAID "GET," YOU DIDN'T HEAR THE REST OF IT, OR MAYBE I JUST

01:07:27   21   SAID "GET."

01:07:28   22   Q.   OKAY. AND NOW LET'S GO ON TO FIGURE 3 OF THE PATENT,

01:07:32   23   ACTUALLY, LET'S GO TO A SLIDE THAT WE HAVE THAT HAS FIGURE 3 ON

01:07:35   24   IT, THIS IS SLIDE 19 OF DR. CHASE'S DECK.

01:07:43   25   DR. CHASE, THIS IS FIGURE 3 WITH SOME SIMILAR CODING

01:07:47 1   ADDED. WHAT DOES FIGURE 3 REPRESENT?

01:07:49 2   A.   WELL, THIS IS -- THIS IS A FLOW CHART. SO IT DESCRIBES

01:07:52 3   THE OPERATION OF AN EMBODIMENT OF CISCO'S PATENT.

01:07:58 4   Q.   OKAY. AND CAN YOU WALK THE JURY THROUGH THE FLOW CHART TO

01:08:01 5   EXPLAIN HOW IT WORKS?

01:08:02 6   A.   SURE.

01:08:03 7   SO WHEN THE SYSTEM GETS A COMMAND, IT'S SORT OF LIKE THE

01:08:09 8   LAST FIGURE WE DISCUSSED. YOU STARTUP HERE AT THE TOP AND IT

01:08:13 9   SAYS, "PARSE FIRST WORD OF GENERIC COMMAND BY MATCHING TOKEN."

01:08:17 10   SO IT'S MATCHING THE TOKEN. IF THE FIRST WORD IS A "GET,"

01:08:21 11   FOR EXAMPLE, THEN IT'S GOING TO GO AHEAD AND PROCEED DOWN THE

01:08:24 12   FLOW CHART.

01:08:24 13   AND WHAT YOU SEE --

01:08:25 14   Q.   CAN I JUST STOP YOU FOR A SECOND. ARE THE WORDS LARGE

01:08:28 15   ENOUGH TO BE LEGIBLE ON YOUR SCREEN?

01:08:31 16   A.   I CAN SEE THEM.

01:08:32 17   Q.   OKAY. OTHERWISE I COULD USE A BLOWN UP VERSION.

01:08:35 18   A.   IT'S OKAY. I HOPE THE JURORS CAN SEE IT.

01:08:39 19   BUT IF THE FIRST WORD IS NOT VALID, THEN IT GOES INTO THIS

01:08:43 20   LITTLE RED BOX AND IT SAYS "INVALID COMMAND." THAT'S AN ERROR

01:08:47 21   MESSAGE THAT IT GIVES.

01:08:49 22   BUT IF THE FIRST COMMAND WORD IS VALID, LIKE "GET," THEN

01:08:52 23   YOU GO THROUGH DOWN TO THIS GREEN PART OF THE TREE. AND DOWN

01:08:56 24   THERE IT DOESN'T REALLY MATTER WHAT HAPPENS, IT WILL GO THROUGH

01:09:00 25   THE REST OF THE WORDS IN THE COMMANDS.

01:09:02   1   BUT WHATEVER HAPPENS, IT'S GOING TO END UP AT THIS BRIGHT

01:09:06   2   GREEN BOX AT THE BOTTOM WHERE IT SAYS, "MAP COMMAND USING

01:09:09   3   COMMAND KEY OF LAST VALID COMMAND WORD."

01:09:11   4   SO WHETHER IT'S A VALID COMMAND OR AN INVALID COMMAND,

01:09:15   5   IT'S GOING TO TAKE THE LAST VALID THING IT SAW AND ISSUE A

01:09:18   6   PRESCRIBED COMMAND TO A MANAGEMENT PROGRAM BASED ON THAT

01:09:23   7   COMMAND KEY.

01:09:23   8   Q.   OKAY. LET'S TAKE DOWN THAT SLIDE.

01:09:30   9   SO WE'VE JUST BEEN TALKING ABOUT THE '526 PATENT ITSELF.

01:09:33   10   ARE YOU AWARE OF ANY PLACE OUTSIDE OF THE '526 PATENT WHERE

01:09:38   11   CISCO HAS TAKEN THE POSITION THAT THE CLAIM REQUIREMENT WE'RE

01:09:42   12   TALKING ABOUT IS IMPORTANT FOR EXECUTING A PARTIALLY VALID

01:09:46   13   COMMAND?

01:09:47   14   A.   YES.

01:09:48   15   Q.   OKAY. AND IN WHAT CONTEXT WAS THAT?

01:09:51   16   A.   WELL, CISCO FILED A STATEMENT WITH THE U.S. PATENT AND

01:09:58   17   TRADEMARK OFFICE THAT WAS SEEKING TO EXPLAIN HOW THIS PATENT

01:10:02   18   WAS DIFFERENT AND NOVEL, HOW IT WAS NEW, RELATIVE TO WHAT CAME

01:10:06   19   BEFORE.

01:10:07   20   Q.   OKAY. AND YOU HAVE A COPY OF THAT DOCUMENT IN TX 5988,

01:10:15   21   THE TAB OF YOUR FOLDER. AND THE RELEVANT PORTIONS ARE ON THE

01:10:20   22   ON THE BOTTOM OF PAGE 8 AND THE TOP OF PAGE 9.

01:10:24   23   AND IF YOU COULD LET ME KNOW WHEN YOU GET THERE.

01:10:27   24   A.   I'M THERE.

01:10:28   25   Q.   OKAY. AND SO CAN YOU DESCRIBE FOR THE JURY THE POSITION

01:10:34 1   THAT CISCO WAS TAKING IN THAT SITUATION?

01:10:37 2   A.   WELL, WHAT THEY WERE SAYING IS THAT OLDER PARSING SYSTEMS

01:10:43 3   PREVIOUS TO THIS PATENT DIDN'T HAVE THE STRUCTURE AND TECHNIQUE

01:10:46 4   OF HAVING A COMMAND ACTION VALUE FOR EVERY WORD, AND THAT AS A

01:10:52 5   RESULT, THEY COULDN'T EXECUTE A COMMAND FOR A PARTIALLY VALID

01:10:58 6   INPUT.

01:10:59 7   AND THEY SAID THAT BECAUSE OF THIS STRUCTURE, HAVING A

01:11:05 8   COMMAND ACTION VALUE FOR EVERY WORD, THAT THE '526 PATENT COULD

01:11:08 9   ACCOMPLISH THAT.

01:11:10 10   AND THEY SAID IT WAS NOVEL AND THEY SAID THAT IT WAS

01:11:13 11   UNIQUE.

01:11:14 12   SO THEY ARE ARGUING THAT THIS IS A VERY IMPORTANT PART OF

01:11:18 13   THE PATENT. AND ONE OF THE THINGS THAT DISTINGUISHES IT FROM

01:11:20 14   THE PRIOR ART, AS WE SAY, AND THEREFORE MERITS A PATENT.

01:11:24 15   Q.   OKAY. ARE YOU SAYING THAT CISCO TOLD THE PATENT AND

01:11:28 16   TRADEMARK OFFICE THAT THE REQUIREMENT OF ASSIGNING A COMMAND

01:11:34 17   ACTION VALUE TO EVERY SINGLE WORD IN THE CLAIM IS IMPORTANT FOR

01:11:38 18   EXECUTING PARTIALLY VALID COMMANDS?

01:11:39 19   A.   YES.

01:11:40 20   MR. JAFFE: OBJECTION, YOUR HONOR. LEADING.

01:11:42 21   THE COURT: OVERRULED.

01:11:44 22   BY MR. KRISHNAN:

01:11:44 23   Q.   AND CISCO CALLED THAT REQUIREMENT NOVEL AND UNIQUE?

01:11:47 24   A.   YES.

01:11:48 25   Q.   OKAY.

01:11:56   1   SO I WOULD LIKE TO TRANSITION NOW FROM TALKING ABOUT THE

01:11:58   2   '526 PATENT TO TALKING ABOUT ARISTA'S EOS PRODUCT.

01:12:03   3   COULD WE PLEASE PULL UP TX 48 WHICH IS ALREADY IN

01:12:07   4   EVIDENCE. AND THERE'S ALSO THAT DOCUMENT IN YOUR BINDER,

01:12:11   5   DR. CHASE, IF YOU WANT TO LOOK AT IT.

01:12:14   6   CAN YOU PLEASE DESCRIBE FOR THE JURY WHAT EXACTLY THIS

01:12:18   7   DOCUMENT IS THAT WE ARE LOOKING AT?

01:12:19   8   A.   WELL, THIS IS A DOCUMENT FROM ARISTA. ARISTA GIVES IT TO

01:12:23   9   CUSTOMERS, ACTUALLY IT'S ON THE WEB, ANYBODY CAN LOOK AT IT.

01:12:26 10   AND IT EXPLAINS -- IT'S CALLED "UNDERSTANDING EOS CLI

01:12:31 11   IMPLEMENTATION." AND IT EXPLAINS THE IMPLEMENTATION OF THE CLI

01:12:36 12   IN ARISTA'S PRODUCT. AND IN PARTICULAR, HOW TO EXTEND THAT CLI

01:12:43 13   BY ADDING PLUG-INS TO THE CLI SYSTEM.

01:12:46 14   Q.   AND NOW LET'S GO TO THE LAST PAGE OF THE DOCUMENT, PAGE 9.

01:12:50 15   AND THERE IS A SUBHEADING THERE CALLED "BEHAVIOR." LET'S

01:12:56 16   BLOW THAT UP, PLEASE.

01:12:57 17   AND FIRST, DR. CHASE, COULD YOU PLEASE READ THAT FIRST

01:13:01 18   SENTENCE UNDER THE HEADING "BEHAVIOR."

01:13:03 19   A.   IT SAYS, "AN ACTION IS THE FUNCTION THAT IS CALLED WITH

01:13:07 20   WHEN A COMPLETE CLI COMMAND IS EXECUTED AND IT CARRIES OUT THE

01:13:13 21   COMMAND."

01:13:14 22   Q.   AND CAN YOU EXPLAIN WHAT THE SIGNIFICANCE OF THAT SENTENCE

01:13:16 23   IS?

01:13:16 24   A.   WELL, WHAT IT'S SAYING IS THAT THE CLI PARSER IN ARISTA'S

01:13:21 25   PRODUCT ASSIGNS AN ACTION FOR A COMPLETE CLI COMMAND. AND THAT

01:13:28 1   WHEN THE COMPLETE CLI COMMAND HAS BEEN PARSED THEN AT THAT TIME

01:13:33 2   THIS ACTION HAS BEEN PERFORMED.

01:13:34 3   Q.   DOES IT SAY THAT HERE OR ANYWHERE ELSE IN THE DOCUMENT

01:13:37 4   THAT ACTIONS ARE ASSIGNED TO PARTICULAR WORDS WITHIN THE CLI

01:13:42 5   COMMAND?

01:13:42 6   A.   NO.

01:13:43 7   Q.   OKAY. AND HAVE YOU REVIEWED THE SOURCE CODE RELEVANT TO

01:13:52 8   THIS SECTION IN THE DOCUMENT?

01:13:53 9   A.   YES.

01:13:54 10 Q.   AND IS THE SOURCE CODE CONSISTENT OR INCONSISTENT WITH THE

01:13:57 11 DESCRIPTION GIVEN HERE?

01:13:57 12 A.   IT'S CONSISTENT. I CAN SEE THAT IT DOESN'T ASSIGN A

01:14:00 13 COMMAND ACTION TO INDIVIDUAL WORDS OR TOKENS, IT ASSIGNS THEM

01:14:05 14 ONLY FOR COMPLETE COMMANDS.

01:14:06 15 Q.   OKAY. LET'S GO ON TO SLIDE 20.

01:14:16 16   NOW DR. CHASE, IF WE COULD BLOW UP THE TEXT THERE, IF

01:14:20 17 THAT'S POSSIBLE, THAT WOULD BE HELPFUL.

01:14:27 18   SO THIS LOOKS LIKE THE EOS COMMAND LINE, LET ME JUST START

01:14:30 19 WITH THE BASIC QUESTION WHICH IS, DO YOU KNOW HOW THIS DOCUMENT

01:14:34 20 WAS GENERATED?

01:14:35 21 A.   YES, I GENERATED THIS DOCUMENT BY PERFORMING AN EXPERIMENT

01:14:39 22 TYPING SOME COMMANDS INTO THE EOS SYSTEM.

01:14:43 23 Q.   OKAY. AND CAN YOU PLEASE DESCRIBE THE EXPERIMENT AND WHY

01:14:46 24 YOU DID IT?

01:14:47 25 A.   WELL, IN THIS CASE I JUST TYPED THE SINGLE WORD "SHOW" AND

01:14:55 1   ENTERED IT AS A COMMAND. NOW "SHOW" IS A VALID COMMAND WORD.

01:14:58 2   IT'S THE FIRST WORD OF MANY COMMANDS, ACTUALLY, BUT BY ITSELF,

01:15:03 3   IT'S NOT A COMPLETE COMMAND.

01:15:04 4   AND THE SYSTEM RESPONDS INCOMPLETE COMMAND. SO I CAN --

01:15:08 5   I'VE LOOKED AT THE CODE AND I CAN SEE THAT THIS IS AN ERROR

01:15:11 6   MESSAGE FROM THE PARSER. AND IT'S, YOU KNOW, THE ERROR MESSAGE

01:15:16 7   SHOWS THAT IT KNOWS THAT SHOW IS A VALID COMMAND WORD, BUT

01:15:19 8   THERE'S JUST -- IT DOESN'T HAVE ENOUGH TO BE A COMPLETE

01:15:23 9   COMMAND.

01:15:26 10   AND IF THE EOS SYSTEM WERE PRACTICING THE PATENT AND IF IT

01:15:30 11   REALLY DID HAVE AN ACTION FOR EVERY COMMAND WORD, THEN WHEN I

01:15:34 12   ENTER JUST THIS WORD, IT SHOULD BE ABLE TO PERFORM THIS ACTION

01:15:38 13   TO ISSUE THE PRESCRIBED COMMAND. BUT IT DOESN'T, IT JUST GIVES

01:15:42 14   AN ERROR MESSAGE.

01:15:43 15   Q.   SO THIS IS AN EXAMPLE FROM THE USER BEHAVIOR PERSPECTIVE.

01:15:47 16   DID YOU CHECK UNDER THE HOOD TO SEE WHETHER OR NOT THE

01:15:50 17   SOURCE CODE IS ACTUALLY ASSIGNING A COMMAND ACTION VALUE TO THE

01:15:55 18   SINGLE WORD SHOW?

01:15:56 19   A.   YES, AND IT DOES NOT.

01:15:58 20   Q.   OKAY. LET'S GO ON TO SLIDE 22, PLEASE.

01:16:09 21   AND WE'RE LOOKING NOW AT SYSTEM FROM DR. JEFFAY, AND THE

01:16:13 22   CITATION IS THE TRIAL TRANSCRIPT, PAGE 1514, LINES 8 TO 15.

01:16:18 23   AND DR. CHASE, WHAT'S THE SIGNIFICANCE OF THIS TESTIMONY

01:16:21 24   FROM DR. JEFFAY?

01:16:23 25   A.   WELL, THIS JUST SAYS THAT DR. JEFFAY AGREES THAT THE

01:16:29   1   SYSTEM TAKES NO ACTION, ASSIGNS NO COMMAND ACTION VALUE IN THE

01:16:36   2   CASE OF A COMMAND THAT IS JUST THE SINGLE WORD "SHOW."

01:16:40   3   Q.   OKAY. NOW LET'S GO ON TO SLIDE 26. -- ACTUALLY, LET'S DO

01:16:50   4   SLIDE 25, FIRST, WHICH IS SLIGHTLY DIFFERENT.

01:16:52   5   NOW IF YOU ARE RIGHT THAT EOS ONLY ASSIGNS COMMAND ACTION

01:16:57   6   VALUES ON THE COMMAND LEVEL AND NOT ON THE WORD LEVEL, WHAT IS

01:17:00   7   THE CONSEQUENCE FOR THE ISSUE OF INFRINGEMENT.

01:17:05   8   A.   WELL THAT WOULD MEAN THAT ELEMENT 1.3 OF THE CLAIM HERE IS

01:17:09   9   NOT MET.

01:17:11   10   AND AGAIN, IF EVEN ONE ELEMENT OF THE CLAIM IS NOT MET,

01:17:14   11 THEN ARISTA DOESN'T INFRINGE THE -- DOESN'T ANYONE CISCO'S

01:17:19   12 PATENT.

01:17:19   13 Q.   OKAY. LET'S GO TO SLIDE 26, NOW.

01:17:22   14   AND WHAT DOES THIS SLIDE SHOW, DR. CHASE?

01:17:26   15 A.   WELL, THIS JUST SHOWS, I ARGUED PREVIOUSLY BEFORE LUNCH,

01:17:31   16 THAT THE FIRST AND LAST ELEMENTS OF THE CLAIM ARE ALSO NOT MET.

01:17:34   17   SO THAT WOULD BE THREE ELEMENTS IN ALL THAT I ARGUED ARE

01:17:37   18 NOT MET.

01:17:38   19 Q.   OKAY. AND YOU MADE TWO SEPARATE POINTS TODAY, ONE ABOUT

01:17:41   20 EOS NOT HAVING MANAGEMENT PROGRAMS, AND ANOTHER ONE THAT EOS

01:17:44   21 DOES NOT ASSIGN A COMMAND ACTION VALUE TO EVERY SINGLE COMMAND

01:17:48   22 WORD.

01:17:49   23   ARE THOSE TWO POINTS INDEPENDENT OF EACH OTHER OR DO THEY

01:17:52   24 RELY ON EACH OTHER?

01:17:54   25 A.   THEY ARE INDEPENDENT.

01:17:55 1   Q.   SO EITHER ONE WOULD BE SUFFICIENT TO SHOW NONINFRINGEMENT?

01:17:58 2   A.   RIGHT, EITHER ONE.

01:18:00 3   Q.   OKAY. LET'S TAKE DOWN THE SLIDE, PLEASE. I JUST HAVE A

01:18:03 4   COUPLE MORE QUESTIONS.

01:18:05 5   NOW I WANT TO PIVOT AWAY FROM THE ISSUE OF INFRINGEMENT

01:18:07 6   AND TALK ABOUT A SEPARATE TOPIC, THE TOPIC ABOUT DESIGN-AROUND.

01:18:13 7   A.   YES.

01:18:13 8   Q.   NOW THAT'S AN ISSUE RELATED TO DAMAGES.

01:18:16 9   DID YOU PRESENT AN OPINION WITH RESPECT TO THE ISSUE OF

01:18:20 10   DESIGN-AROUND, DR. CHASE?

01:18:22 11   A.   YES.

01:18:23 12   Q.   AND COULD YOU PLEASE EXPLAIN TO THE JURY THE LEGAL

01:18:26 13   FRAMEWORK UNDER WHICH YOU WERE OPERATING WHEN YOU PRESENTED THE

01:18:29 14   DESIGN AROUND?

01:18:31 15   A.   SURE.

01:18:32 16   Q.   WELL, I'VE JUST SAID THAT I BELIEVE THAT ARISTA DOES NOT

01:18:35 17   INFRINGE CISCO'S PATENT.

01:18:41 18   BUT THE PURPOSE OF A DESIGN-AROUND ANALYSIS, I'M ASKED TO

01:18:45 19   ASSUME THAT MAYBE YOU FIND THAT THEY DO INFRINGE CISCO'S

01:18:48 20   PATENT.

01:18:48 21   AND SO THE PURPOSE OF A DESIGN AROUND ANALYSIS IS TO

01:18:52 22   PROPOSE WAYS THAT ARISTA COULD MODIFY ITS SYSTEM IN ORDER TO

01:18:56 23   AVOID INFRINGING THE PATENT, TO CHANGE IT SO THAT IT DOESN'T

01:18:59 24   INFRINGE.

01:19:00 25   Q.   OKAY. AND WERE YOU ABLE TO IDENTIFY ANY DESIGN-AROUNDS

01:19:04 1   THAT YOU COULD DESCRIBE IN COURT TODAY?

01:19:05 2   A.   YES.

01:19:06 3   Q.   OKAY. AND WHY DON'T YOU DESCRIBE ONE OF THE

01:19:09 4   DESIGN-AROUNDS YOU CAME UP WITH?

01:19:10 5   A.   WELL, THE PATENT REQUIRES THESE MANAGEMENT PROGRAMS, AND

01:19:14 6   THE MANAGEMENT PROGRAMS EXECUTE COMMANDS IN THEIR OWN FORMATS.

01:19:19 7   THE GENERIC COMMAND LANGUAGE IS AN ABSTRACTION OVER THOSE

01:19:24 8   FORMATS.

01:19:25 9   SO ONE DESIGN-AROUND WOULD BE TO CHANGE THE ACCUSED

01:19:28 10   MANAGEMENT PROGRAMS. IN THIS CASE, THE EOS AGENTS, SO THAT

01:19:32 11   THEY EXECUTE COMMANDS IN THE FORMAT OF THE CLI COMMAND LANGUAGE

01:19:37 12   INSTEAD OF IN THEIR OWN FORMATS.

01:19:39 13   Q.   AND WHY WOULD THAT DESIGN-AROUND AVOID INFRINGEMENT OF THE

01:19:44 14   PATENT, ASSUMING THAT THERE IS INFRINGEMENT OF THE PATENT?

01:19:49 15   A.   WELL, THEN THERE WOULD BE NO NEED FOR THE PARSER

01:19:52 16   TRANSLATOR TO TRANSLATE THE GENERIC COMMAND INTO A PRESCRIBED

01:19:54 17   COMMAND. AND THE GENERIC COMMAND WOULD BE SUFFICIENT.

01:19:57 18   Q.   AND WHY DO YOU BELIEVE THIS WOULD BE A FEASIBLE SOLUTION

01:20:01 19   FOR ARISTA TO IMPLEMENT?

01:20:02 20   A.   WELL, THE EOS AGENTS, THE AGENTS ARE IMPORTANT PARTS OF

01:20:06 21   THE EOS PLATFORM. BUT THEY ARE ALL CODE THAT ARISTA HAS

01:20:10 22   WRITTEN, IT'S ARISTA'S OWN CODE. SO THEY CAN MAKE THOSE

01:20:17 23   CHANGES.

01:20:17 24   AND THE CHANGE THAT THEY WOULD HAVE TO MAKE WOULDN'T

01:20:20 25   CHANGE THE FUNCTION OF THE AGENTS AT ALL. THAT'S THE HARD PART

01:20:22 1   IS WHAT THE AGENTS DO TO MANAGE THE SWITCH. IT WOULD ONLY

01:20:25 2   CHANGE THE INTERFACE TO THOSE AGENTS, THAT IS, WHAT YOU HAVE TO

01:20:28 3   SAY TO THE AGENTS TO GET THEM TO DO THOSE FUNCTIONS.

01:20:33 4   Q.   SO I GUESS BEFORE WE STEP OFF OF THIS POINT, I DO JUST

01:20:37 5   WANT TO CONFIRM, YOUR TESTIMONY THOUGH, DR. CHASE, IS THAT YOU

01:20:40 6   DON'T BELIEVE THAT THE ARISTA SYSTEM INFRINGES, CORRECT?

01:20:42 7   A.   RIGHT. I BELIEVE THAT THERE IS NO INFRINGEMENT HERE.

01:20:45 8   Q.   OKAY. LAST POINT THAT I WANT TO TALK ABOUT, THIS IS THE

01:20:49 9   ISSUE OF IOS XR. THAT IS THE PRODUCT THAT DR. JEFFAY

01:20:58 10   TESTIFIED, CISCO OWN PRODUCT THAT PRACTICES THE '526 PATENT.

01:21:03 11   NOW DR. JEFFAY TESTIFIED THAT YOU DID NOT DISPUTE HIS

01:21:07 12   OPINION THAT IOS XR, THE CISCO PRODUCT, PRACTICES THE PATENT.

01:21:12 13   SO I JUST WANT TO BE VERY CLEAR ABOUT WHAT YOU DID DO AND

01:21:16 14   WHAT YOU DIDN'T DO IN YOUR ANALYSIS.

01:21:20 15   AT ANY POINT, DID YOU EVALUATE DR. JEFFAY'S OPINION ABOUT

01:21:24 16   IOS XR AND PROVIDE YOUR OWN OPINION THAT YOU AGREE WITH HIM?

01:21:28 17   A.   NO.

01:21:29 18   Q.   AND DID YOU, IN FACT, OFFER ANY OPINION AS TO THE ISSUE OF

01:21:34 19   WHETHER OR NOT CISCO IOS XR PRACTICES THE PATENT?

01:21:39 20   A.   NO. I WAS ASKED TO LOOK AT INFRINGEMENT. THE

01:21:44 21   INFRINGEMENT QUESTION. THIS QUESTION OF WHETHER CISCO

01:21:47 22   PRACTICES ITS OWN PATENT HAS NOTHING TO DO WITH INFRINGEMENT,

01:21:51 23   AND I DIDN'T LOOK AT THAT, I DIDN'T OFFER ANY OPINIONS.

01:21:54 24   SO ANYTHING THAT DR. JEFFAY IS SAYING THERE IS SOMETHING

01:21:56 25   THAT DR. JEFFAY IS SAYING AND NOT ANYTHING THAT I HAVE AGREED

01:21:59   1   WITH.

01:22:00   2   MR. KRISHNAN: OKAY. NO FURTHER QUESTIONS,

01:22:02   3   YOUR HONOR.

01:22:03   4   THE COURT: THANK YOU.

01:22:05   5   MR. JAFFE, THIS IS YOUR WITNESS.

01:22:11   6   **CROSS-EXAMINATION**

01:22:12   7   BY MR. JAFFE:

01:22:34   8   Q. GOOD AFTERNOON, DR. CHASE.

01:22:35   9   A. GOOD AFTERNOON.

01:22:35 10   Q. GOOD TO SEE YOU AGAIN.

01:22:37 11   A. IT'S A PLEASURE.

01:22:38 12   Q. I HOPE YOU GOT YOUR SODA AT LUNCH.

01:22:41 13   A. I DRINK WATER.

01:22:42 14   Q. GOOD.

01:22:44 15   SO I JUST WANT TO START WHERE YOU BEGAN IN TERMS OF YOUR

01:22:48 16   TESTIMONY. YOU'VE PUT IN TWO BASIC OPINIONS ON

01:22:53 17   NONINFRINGEMENT; IS THAT RIGHT?

01:22:53 18   A. YES.

01:22:53 19   Q. OKAY. AND BECAUSE OF THOSE TWO OPINIONS, YOU OPINED

01:22:58 20   DURING YOUR TESTIMONY TODAY THAT THREE LIMITATIONS OF CLAIMS 1

01:23:02 21   AND 14 AREN'T MET BY ARISTA'S PRODUCTS; IS THAT RIGHT?

01:23:05 22   A. THAT'S CORRECT.

01:23:05 23   Q. SO FOR PURPOSES OF YOUR TESTIMONY TODAY, JUST TO KIND OF

01:23:10 24   DEFINE WHERE WE ARE, YOU DIDN'T PUT ANY TESTIMONY IN DISPUTING

01:23:15 25   ANY OTHER CLAIM LIMITATIONS; RIGHT?

01:23:16 1   A.   NOT IN MY TESTIMONY HERE.

01:23:20 2   Q.   OKAY. SO MR. FISHER, IF WE CAN PUT UP SLIDE 3 FROM

01:23:28 3   DR. CHASE'S DECK.

01:23:31 4   SO LOOKING AT, AND AGAIN, THIS IS YOUR SLIDE FROM YOUR

01:23:34 5   DIRECT PRESENTATION; RIGHT?

01:23:36 6   A.   YES.

01:23:37 7   Q.   OKAY. SO YOU DIDN'T PUT IN ANY TESTIMONY OR OPINIONS

01:23:41 8   ABOUT WHETHER ARISTA'S PRODUCTS RECEIVE A GENERIC COMMAND FROM

01:23:44 9   THE USER; RIGHT?

01:23:45 10   A.   NO, I DID NOT.

01:23:46 11   Q.   AND YOU DIDN'T PUT IN ANY OPINIONS REGARDING WHETHER

01:23:49 12   ARISTA'S PRODUCTS VALIDATE THE GENERIC COMMAND BASED ON A

01:23:53 13   COMMAND PARSE TREE, AND IT CONTINUES FROM THERE; IS THAT RIGHT?

01:23:56 14   A.   NO, I DID NOT.

01:23:57 15   Q.   AND YOU DIDN'T DISPUTE DR. JEFFAY'S OPINION THAT ARISTA'S

01:24:01 16   PRODUCTS PERFORM STEP 1.4, THE VALIDATING STEP; RIGHT?

01:24:06 17   A.   NO, I DID NOT.

01:24:07 18   Q.   ALL RIGHT. LET'S TURN BACK TO THE OPINIONS THAT YOU DID

01:24:10 19   OFFER NOW THAT WE'VE KIND OF CLARIFIED THE SCOPE OF THIS

01:24:13 20   DISPUTE.

01:24:13 21   YOU WERE HERE FOR DR. JEFFAY'S TESTIMONY; RIGHT?

01:24:18 22   A.   YES.

01:24:18 23   Q.   AND DR. JEFFAY IDENTIFIES AGENTS IN EOS BROADLY AS A CLASS

01:24:24 24   AS MANAGEMENT PROGRAMS; RIGHT?

01:24:27 25   A.   YES.

01:24:29 1   Q.   AND YOUR FIRST OPINION, IF WE CAN JUST PUT UP SLIDE IT

01:24:33 2   WOULD HAVE DR. CHASE'S SLIDE PRESENTATION AGAIN, IS THAT THE

01:24:35 3   EOS AGENTS ARE NOT MANAGEMENT PROGRAMS; RIGHT?

01:24:38 4   A.   YES, AND I UNDERSTOOD DR. JEFFAY TO BE ACCUSING

01:24:41 5   SPECIFICALLY EOS AGENTS.

01:24:43 6   Q.   OKAY. MANAGEMENT PROGRAMS, THAT'S A CLAIM TERM IN THE

01:24:47 7   '526 PATENT; RIGHT?

01:24:48 8   A.   YES.

01:24:49 9   Q.   AND THE COURT HAS PROVIDED US A DEFINITION FOR WHAT

01:24:53 10   MANAGEMENT PROGRAMS MEANS; RIGHT?

01:24:55 11   A.   YES.

01:24:56 12   Q.   AND IF WE CAN LOOK AT YOUR SLIDE 6, WE CAN SEE THAT YOU

01:24:59 13   ACTUALLY LAID THIS OUT HERE, THE COURT'S CONSTRUCTION OF

01:25:02 14   MANAGEMENT PROGRAMS.

01:25:04 15   DO YOU SEE THAT?

01:25:05 16   A.   YES.

01:25:05 17   Q.   AND WHEN YOU WERE LOOKING AT WHETHER ARISTA'S PRODUCTS

01:25:11 18   CONTAINED MANAGEMENT PROGRAMS, YOU USED THE DEFINITION PROVIDED

01:25:13 19   BY THE COURT HERE; RIGHT?

01:25:14 20   A.   CERTAINLY.

01:25:15 21   Q.   SO IF THE AGENTS IN EOS, IF THEY MET THIS DEFINITION OF

01:25:19 22   MANAGEMENT PROGRAM, YOU WOULD AGREE THEN THAT ARISTA'S PRODUCTS

01:25:24 23   INCLUDE MANAGEMENT PROGRAMS; RIGHT?

01:25:26 24   A.   YES.

01:25:26 25   Q.   AND THE COURT'S CLAIM CONSTRUCTION, I JUST WANT TO FOCUS

01:25:30 1   IN ON ONE WORD, IT ACTUALLY SAYS "AGENTS" IN THE DEFINITION;

01:25:33 2   RIGHT?

01:25:33 3   A.   IT DOES.

01:25:34 4   Q.   OKAY. BUT YOUR OPINION IS THAT THE AGENTS THAT ARE IN

01:25:38 5   EOS, THEY ARE NOT AGENTS; RIGHT?

01:25:39 6   A.   I DIDN'T SAY THAT.

01:25:43 7   Q.   YOUR OPINION IS THAT THE EOS AGENTS ARE NOT AGENTS, AS

01:25:47 8   DEFINED IN THIS CLAIM CONSTRUCTION; RIGHT?

01:25:49 9   A.   WELL, THAT'S NOT THE ONLY PART OF THE COURT'S

01:25:54 10   CONSTRUCTION.

01:25:55 11   Q.   OKAY.

01:25:56 12   A.   SO EVEN IF THEY ARE, IF THE MEANING OF "AGENTS" IN THAT

01:26:01 13   SENTENCE IS THE SAME AS THE TERM "AGENTS" FOR EOS AGENTS, THAT

01:26:05 14   STILL IS IT NOT ENOUGH FOR THEM TO QUALIFY AS MANAGEMENT

01:26:09 15   PROGRAMS UNDER THAT CONSTRUCTION.

01:26:10 16   Q.   OKAY. SO LET'S TAKE A STEP BACK AND TALK ABOUT SOME OF

01:26:13 17   YOUR OPINIONS ABOUT MANAGEMENT PROGRAMS, OKAY?

01:26:18 18   A.   YES.

01:26:18 19   Q.   I TOOK YOUR DEPOSITION EARLIER IN THIS MATTER; RIGHT?

01:26:21 20   A.   YES, I RECALL THAT.

01:26:22 21   Q.   AND YOU REMEMBER WHEN I ASKED YOU AT YOUR DEPOSITION IF

01:26:24 22   YOU COULD IDENTIFY ANY MANAGEMENT PROGRAMS THAT EXISTED IN THE

01:26:27 23   MARKETPLACE TODAY, THAT WOULD FIT THIS COURT'S DEFINITION, YOU

01:26:31 24   COULDN'T COME UP WITH ANY; RIGHT?

01:26:33 25   A.   I THINK THAT'S ACCURATE.

01:26:38   1   Q.   AND THEN I ASKED YOU, COULD YOU COME UP WITH A MANAGEMENT

01:26:40   2   PROGRAM THAT EXISTED HISTORICALLY, AND YOU ALSO COULDN'T NAME

01:26:43   3   ONE; RIGHT?

01:26:44   4   A.   I WOULDN'T NAME ONE, YES.

01:26:47   5   Q.   AND IN FACT, I ASKED YOU IF YOU WERE AWARE OF ANY

01:26:50   6   PARTICULAR MANAGEMENT THAT HAS EXISTED EVER, AND YOU COULDN'T

01:26:54   7   NAME ONE; RIGHT?

01:26:55   8   A.   THAT'S TRUE. I JUST WANT TO BE CLEAR THAT THE QUESTION OF

01:26:57   9   WHETHER SOMETHING IS A MANAGEMENT PROGRAM UNDER THE PATENT,

01:27:01   10   IT'S A DIFFICULT QUESTION, IT'S A SUBJECTIVE QUESTION.

01:27:04   11   DR. JEFFAY AND I AGREE ON THAT. AND I DECLINED TO OFFER

01:27:11   12   OPINIONS ABOUT WHETHER IS OR IS NOT A MANAGEMENT PROGRAM

01:27:14   13   OUTSIDE OF THE PARTICULAR ASSERTIONS THAT WERE MADE BY

01:27:19   14   DR. JEFFAY.

01:27:20   15   Q.   SIR, YOU CAN'T IDENTIFY ANY PARTICULAR MANAGEMENT PROGRAM

01:27:22   16   THAT HAS EVER EXISTED; RIGHT?

01:27:24   17   A.   SURE.

01:27:24   18   Q.   ALL RIGHT. LET'S TALK A LITTLE BIT ABOUT THE AGENTS IN

01:27:29   19   EOS?

01:27:29   20   A.   SURE.

01:27:30   21   Q.   YOU AGREE THAT ARISTA HAS WHAT YOU CALL EOS AGENTS; RIGHT?

01:27:34   22   A.   YES.

01:27:34   23   Q.   AND YOU HEARD THE CORPORATE TESTIMONY OF MR. ADAM SWEENEY

01:27:39   24   FROM ARISTA?

01:27:39   25   A.   YES.

01:27:40 1   Q.   AND HE TESTIFIED THAT ONE OF THE THINGS THAT THESE AGENTS

01:27:44 2   IN EOS DO IS MANAGE THE STATE OF THE SWITCH, AND I BELIEVE YOU

01:27:47 3   TESTIFIED TO THIS EFFECT ON YOUR DIRECT; RIGHT?

01:27:49 4   A.   YES.

01:27:49 5   Q.   OKAY. AND YOU ARE NOT DISPUTING MR. SWEENEY'S SWORN

01:27:53 6   TESTIMONY ABOUT HOW THE AGENTS IN EOS WORK; RIGHT?

01:27:55 7   A.   NO.

01:27:56 8   Q.   ONE OF THE OTHER THINGS THAT MR. SWEENEY SAID WAS THAT

01:28:02 9   AGENTS IS ANOTHER NAME FOR A PROCESS IN EOS; RIGHT?

01:28:05 10   A.   I RECALL HIM SAYING THAT AGENTS ARE PROCESSES. I DO NOT

01:28:12 11   RECALL HIM SAYING THAT ALL PROCESSES ARE AGENTS.

01:28:14 12   Q.   OKAY. LET'S TAKE A LOOK AT WHAT MR. SWEENEY SAID, AND

01:28:17 13   THIS IS TESTIMONY THAT'S ALREADY BEEN PLAYED AT TRIAL. THIS IS

01:28:21 14   FROM HIS DEPOSITION, IT'S 538, LINE 16 THROUGH 19.

01:28:29 15   DO YOU SEE THE TESTIMONY THAT WE JUST PUT UP HERE ON THE

01:28:32 16   SCREEN FROM MR. SWEENEY?

01:28:33 17   A.   YES.

01:28:34 18   Q.   AND HE SAYS?

01:28:36 19   "QUESTION: YOU MENTIONED AGENTS. WHAT ARE AGENTS IN

01:28:39 20   EOS?"

01:28:40 21   DO YOU SEE THAT?

01:28:41 22   A.   YES.

01:28:41 23   Q.   AND HIS ANSWER WAS:

01:28:43 24   "AN AGENT IS, IS ANOTHER NAME FOR OUR PROCESS, REALLY."

01:28:47 25   RIGHT?

01:28:48 1   A.   YES.

01:28:48 2   I DON'T BELIEVE THAT MR. SWEENEY MEANT OR WHETHER

01:28:51 3   MR. SWEENEY BELIEVES THAT EVERY PROCESS IN THE EOS SYSTEM IS AN

01:28:54 4   AGENT.

01:28:54 5   Q.   YOU ARE NOT DISPUTING MR. SWEENEY'S TESTIMONY; RIGHT?

01:28:57 6   A.   NO.

01:28:58 7   Q.   OKAY. SO "AGENTS" IS JUST ANOTHER NAME FOR "PROCESS,"

01:29:02 8   ACCORDING TO MR. SWEENEY; RIGHT?

01:29:04 9   A.   THOSE ARE THE WORDS THAT MR. SWEENEY USED, YES.

01:29:07 10   Q.   AND IN FACT, IN ARISTA'S OWN DOCUMENTS IT SAYS THAT AGENTS

01:29:11 11   IN EOS ARE JUST REGULAR LINUX PROCESSES; RIGHT?

01:29:15 12   A.   YES. AGAIN, AGENTS ARE REGULAR LINUX PROCESSES, BUT

01:29:20 13   PROCESS IS NOT AN AGENT. THERE ARE OTHER KINDS OF PROCESSES.

01:29:26 14   Q.   IN ARISTA'S DOCUMENTS, THEY ALSO SAY AGENTS IN EOS ARE

01:29:29 15   STANDARD LINUX PROCESSES; RIGHT?

01:29:32 16   A.   YES.

01:29:33 17   Q.   OKAY. NOW IF WE USE THE DEFINITION THAT ARISTA USES, AND

01:29:39 18   MR. SWEENEY USED FOR "AGENTS" AS PROCESSES -- ARE YOU WITH ME?

01:29:45 19   A.   YOU ARE ASKING ME TO ASSUME THAT EVERY PROCESS IS AN

01:29:48 20   AGENT?

01:29:48 21   Q.   YES.

01:29:49 22   A.   OKAY.

01:29:51 23   Q.   OKAY. YOU WOULD AGREE THAT DR. JEFFAY HAS ONLY ACCUSED

01:29:55 24   FUNCTIONS THAT RUN AS SEPARATE PROCESSES, AS MANAGEMENT

01:29:58 25   PROGRAMS; RIGHT?

01:29:59 1   A.   I WOULD AGREE TO THAT, YES.

01:30:01 2   Q.   SO IF WE TAKE THIS DEFINITION OF AGENTS, WHICH IS AGENTS

01:30:04 3   ARE JUST PROCESSES, YOU WOULD AGREE THAT DR. JEFFAY HAS

01:30:09 4   IDENTIFIED AGENTS AS THE COURT DEFINES IT; RIGHT?

01:30:11 5   A.   WELL, IN HIS EXPERT REPORT AND IN HIS DEPOSITION,

01:30:14 6   DR. JEFFAY WAS VERY CLEAR AT SOME LENGTH, THAT WHAT HE WAS

01:30:20 7   ACCUSING AS AGENTS ARE THE EOS AGENTS. I BELIEVE HE WAS VERY

01:30:23 8   CLEAR ABOUT THAT IN HIS DIRECT TESTIMONY AS WELL.

01:30:26 9   Q.   OKAY. WELL, LET'S TALK ABOUT EOS AGENTS UNDER YOUR

01:30:29 10   DEFINITION THEN.

01:30:30 11   MR. SWEENEY, AGAIN, HE TESTIFIED, AND YOU'RE AWARE THAT

01:30:34 12   THERE'S SOMETHING CALLED AN SNMP AGENT IN THE EOS?

01:30:37 13   A.   YES.

01:30:37 14   Q.   OKAY. AND WHAT DOES THAT STAND FOR?

01:30:39 15   A.   SIMPLE NETWORK MANAGEMENT PROTOCOL. IT'S ANOTHER ONE OF

01:30:45 16   THOSE PROTOCOL ACRONYMS.

01:30:46 17   Q.   OKAY. AND YOU ARE ALSO AWARE THAT THERE'S AN SNMP AGENT

01:30:49 18   DISCUSSED IN THE BACKGROUND OF THE '526 PATENT TOO; RIGHT?

01:30:53 19   A.   YES.

01:30:54 20   Q.   SO WE HAVE AN SNMP AGENT IN EOS AND WE HAVE ONE DISCUSSED

01:30:58 21   IN THE PATENT; RIGHT?

01:30:59 22   A.   YES.

01:30:59 23   Q.   AND DR. JEFFAY, HE ACTUALLY IDENTIFIED IN ONE OF HIS 77

01:31:04 24   COMMANDS, SOMETHING THAT MENTIONS SNMP TOO; RIGHT?

01:31:09 25   A.   YES, A FEW OF THEM, I BELIEVE.

01:31:11 1   Q.   OKAY. IF WE CAN SHOW FROM DR. JEFFAY'S PRESENTATION,

01:31:14 2   SLIDE 39, PLEASE.

01:31:19 3   DO YOU SEE HERE ON THE BOTTOM ONE WHERE IT SAYS "SHOW SNMP

01:31:23 4   MIB?"

01:31:24 5   A.   YES.

01:31:24 6   Q.   AND DR. JEFFAY, HE IDENTIFIED A PRESCRIBED COMMAND THAT

01:31:29 7   EXPRESSLY MENTIONS THE SNMP AGENT THAT GOES ALONG WITH THIS

01:31:32 8   GENERIC COMMAND; RIGHT?

01:31:34 9   A.   YES.

01:31:35 10   Q.   OKAY. SO YOU DON'T DISPUTE THAT FOR THIS COMMAND HE'S

01:31:38 11   IDENTIFIED AN SNMP AGENT; RIGHT?

01:31:40 12   A.   I DON'T THINK HE HAS SHOWN THAT THE SNMP AGENT NECESSARILY

01:31:45 13   PLAYS ANY ROLE IN THE EXECUTION OF THIS COMMAND.

01:31:48 14   AND THERE'S A SIMILAR -- I MEAN, THIS COMMAND IS GOING TO

01:31:52 15   FETCH INFORMATION FROM THE SNMP MANAGEMENT INFORMATION BASE.

01:31:56 16   THERE MAY BE AN AGENT WHO MAINTAINS THAT, BUT THAT STATE IS

01:32:01 17   STORED IN SYSDB, AND THE AGENT DOESN'T NECESSARILY HAVE TO BE

01:32:05 18   INVOLVED AT ALL IN PROVIDING THAT INFORMATION.

01:32:07 19   AND I SHOWED ANALYSIS FOR A SIMILAR KIND OF COMMAND WITH

01:32:09 20   RESPECT TO SHOWING "OPENFLOW STATE," "SHOW OPENFLOW FLOWS."

01:32:14 21   BUT I HAVE NOT ANALYZED THIS PARTICULAR COMMAND. AND

01:32:19 22   DR. JEFFAY HASN'T PRESENTED ANY ANALYSIS TO ME ABOUT IT.

01:32:22 23   Q.   OKAY. LET'S LOOK -- IF WE CAN LOOK AT EXHIBIT 599, WHICH

01:32:26 24   IS ALREADY IN EVIDENCE. IT'S ALSO IN YOUR BINDER, DR. CHASE.

01:32:33 25   AND I WANT TO FOCUS ON A COMMAND THAT WE HAVE BEEN TALKING

01:32:37 1   ABOUT WHICH IS "SHOW SNMP MIB."

01:32:52 2   ARE YOU THERE?

01:32:53 3   A.   YES.

01:32:54 4   Q.   OKAY. SO YOU SEE THE "SHOW SNMP MIB" GENERIC COMMAND THAT

01:33:00 5   WE WERE JUST TALKING ABOUT?

01:33:01 6   A.   YES.

01:33:01 7   Q.   AND IF YOU LOOK AT THE IDENTIFIED PRESCRIBED COMMAND, IT

01:33:05 8   SAYS "SNMP AGENT" RIGHT THERE IN THE PRESCRIBED COMMAND,

01:33:07 9   DOESN'T IT?

01:33:08 10   A.   WELL, OF COURSE. AGENT IS A TERM THAT'S USED IN THE

01:33:11 11   CONTEXT OF SNMP INDEPENDENT OF ANY USE OF THE TERM AGENT IN

01:33:17 12   EOS, AND CERTAINLY THE PRESENCE OF SNMP AGENT IN THE PATENT,

01:33:21 13   WHICH PREDATES EOS BY A FEW YEARS IS EVIDENCE OF THAT.

01:33:27 14   SO THIS IS NOT NECESSARILY REFERRING TO IT, TO AN EOS

01:33:32 15   AGENT.

01:33:32 16   Q.   SO THIS IS AN INSTANCE WHERE IT USES THE WORD AGENT BUT

01:33:35 17   IT'S NOT ACTUALLY TALKING ABOUT THE WORD AGENT; RIGHT?

01:33:39 18   A.   I HAVEN'T DONE AN ANALYSIS ON THAT POINT, BUT I DON'T

01:33:42 19   BELIEVE THAT IT IS. AGENT IS A VERY COMMON TERM IN THE CONTEXT

01:33:45 20   OF SNMP.

01:33:47 21   Q.   I SEE. SO YOU HAVEN'T ACTUALLY LOOKED AT THE SOURCE CODE

01:33:49 22   FOR THIS COMMAND; RIGHT?

01:33:50 23   A.   I BELIEVE THAT THIS PRESCRIBED COMMAND IS ACTUALLY A

01:33:54 24   STANDARD LINUX COMMAND BUT I HAVE NOT ANALYZED IT.

01:33:57 25   Q.   AGAIN, JUST TO BE CLEAR, YOU HAVEN'T LOOKED AT THE SOURCE

01:34:00 1   CODE FOR THIS COMMAND; RIGHT?

01:34:01 2   A.   I HAVE NOT LOOKED AT THE SOURCE CODE FOR THE PROGRAM

01:34:04 3   CALLED SNMP BULK WALK.

01:34:07 4   Q.   AND IF WE LOOK IN THE RIGHT MOST COLUMN, THE FILE THAT IS

01:34:11 5   ACTUALLY CITED BY DR. JEFFAY FOR THIS COMMAND IS AGENT CLI,

01:34:16 6   ISN'T IT?

01:34:16 7   A.   I'M SORRY. THAT'S NOT BLOWN UP, I CAN'T QUITE SEE IT.

01:34:24 8   Q.   EXCUSE ME. WRONG ONE. WE ARE GOING TO SWITCH TO A

01:34:28 9   DIFFERENT ONE.

01:34:29 10   AND THERE'S ONE ABOUT TEN ROWS FROM THE BOTTOM ON 599.

01:34:34 11   AND THAT ONE SAYS "TRACE MONITOR AGENT."

01:34:36 12   DO YOU SEE THAT ROW?

01:34:39 13   A.   YES.

01:34:42 14   Q.   OKAY. THAT ONE SAYS "AGENT," RIGHT? IN THE GENERIC

01:34:46 15   COMMAND; RIGHT?

01:34:47 16   A.   YES.

01:34:48 17   Q.   AND NOW IF WE LOOK AT THE THIRD COLUMN WHICH SAYS "AGENT,"

01:34:53 18   THAT SAYS "AGENT CLI;" RIGHT?

01:34:55 19   A.   YES.

01:34:56 20   Q.   NOW LET'S TURN BACK TO THE '526 PATENT ITSELF.

01:35:04 21   IN YOUR OPINION, THE '526 PATENT DOESN'T IDENTIFY ANY

01:35:08 22   SPECIFIC MANAGEMENT PROGRAMS; RIGHT?

01:35:13 23   A.   WELL, THE '526 PATENT HAS THESE APPENDIXES THAT GIVE A LOT

01:35:19 24   OF DETAILS AND EXAMPLES FROM THE SYSTEM THAT THE INVENTOR

01:35:24 25   TALKED ABOUT, THAT WAS THE UCL PRODUCT, THAT THEY HAD DONE AT

01:35:30   1   THEIR COMPANY.

01:35:31   2   AND I THINK THAT IT'S INTENDING TO GIVE EXAMPLES OF

01:35:38   3   MANAGEMENT PROGRAM IN THAT APPENDIX. I'M NOT FAMILIAR WITH

01:35:43   4   THAT SYSTEM.

01:35:43   5   Q.   OKAY. LET'S TAKE A LOOK AT WHAT YOU SAID IN YOUR

01:35:46   6   DEPOSITION. IF YOU COULD LOOK AT PAGE 130, LINES 13

01:35:49   7   THROUGH 17.

01:35:54   8   A.   OF MY DEPOSITION?

01:35:58   9   MR. JAFFE: YOUR HONOR, MAY I PLAY THE CLIP?

01:36:00   10   THE COURT: YES.

01:36:06   11   **(THE VIDEO DEPOSITION OF DR. CHASE WAS PLAYED INTO THE**

01:36:26   12   **RECORD.)**

01:36:26   13   Q.   THAT WAS TRUE AND CORRECT TESTIMONY; RIGHT?

01:36:28   14   A.   YES.

01:36:31   15   Q.   AND YOU TESTIFIED EARLIER THAT DR. JEFFAY IDENTIFIED THE

01:36:34   16   AGENTS IN THE EOS BROADLY AS A CLASS AS BEING MANAGEMENT

01:36:38   17   PROGRAMS; RIGHT?

01:36:40   18   A.   YES.

01:36:40   19   Q.   OKAY. AND KEEP GOING ON THIS EXAMPLE IN THE '526 PATENT,

01:36:48   20   IF WE CAN PULL UP FROM EXHIBIT 95, WHICH IS ALREADY IN

01:36:51   21   EVIDENCE, THE '526 PATENT, APPENDIX PART A, WHICH INCLUDES

01:36:58   22   PRESCRIBED COMMANDS.

01:37:03   23   AND DR. CHASE, WHEN I ASKED YOU AT YOUR DEPOSITION, YOU

01:37:06   24   TESTIFIED THAT YOU DON'T HAVE ENOUGH INFORMATION TO DETERMINE

01:37:10   25   WHETHER ANY OF THE EXAMPLES IN APPENDIX PART A DESCRIBED

01:37:15 1   GENERIC COMMANDS; RIGHT?

01:37:22 2   A.   THAT'S CORRECT.

01:37:24 3   Q.   AND YOU ALSO CAN'T SAY, AND YOU CAN'T DETERMINE WHETHER

01:37:27 4   THERE ARE ANY PRESCRIBED COMMANDS IN THE EXAMPLE APPENDIX PART

01:37:32 5   AN OF THE '526 PATENT ITSELF; RIGHT?

01:37:35 6   A.   YES. AGAIN, THIS IS AN APPENDIX TO THE '526 PATENT. IT

01:37:42 7   LISTS A BUNCH OF STUFF THAT WAS AN EMBODIMENT OF THE '526

01:37:47 8   PATENT.

01:37:48 9   AND I NOTE, IT DOESN'T SAY WHY IN THE TEXT, BUT I JUST

01:37:51 10   NOTE THAT THE COLUMNS HERE SAY "FUNCTION," "ITEM," "NEW SYNTAX"

01:37:55 11   AND "OLD SYNTAX." THEY DON'T NECESSARILY IDENTIFY ANYTHING AS

01:37:58 12   A GENERIC COMMAND OR AS A PRESCRIBED COMMAND; ALTHOUGH THAT MAY

01:38:03 13   VERY WELL BE THE INTENT, I DON'T KNOW.

01:38:04 14   I DON'T KNOW WHAT H323 RAD VISION MEANS, IT HAS SOMETHING

01:38:11 15   TO DO WITH THE SYSTEM.

01:38:12 16   Q.   YOU DON'T KNOW WHAT THESE EXAMPLES FROM THE PATENT

01:38:14 17   ACTUALLY MEAN; RIGHT?

01:38:15 18   A.   NO.

01:38:16 19   Q.   SO WE'VE TALKED A LOT ABOUT EXHIBIT 599 WHICH IS

01:38:20 20   DR. JEFFAY'S ANALYSIS ON INFRINGEMENT, THAT CHART THAT WE

01:38:23 21   LOOKED AT EARLIER; DO YOU REMEMBER THAT?

01:38:24 22   A.   I'M SORRY, THE EXHIBIT -- 599, YES, THANK YOU. TX 599,

01:38:30 23   YES.

01:38:30 24   Q.   AND IN THAT CHART, DR. JEFFAY CITES BY FILE AND LINE

01:38:34 25   NUMBERS, 77 SPECIFIC PRESCRIBED COMMANDS; RIGHT?

01:38:40 1   A.   YES.

01:38:41 2   Q.   AND IN PREPARING YOUR NONINFRINGEMENT OPINIONS, YOU DIDN'T

01:38:45 3   REVIEW THE SOURCE CODE CITED IN THIS DOCUMENT FOR 71 OF THE 77

01:38:50 4   COMMANDS; RIGHT?

01:38:51 5   A.   THAT'S TRUE, EXCEPT THAT I REVIEWED THE SOURCE CODE FOR

01:38:55 6   THE OPEN FLOW SHOW AND THAT'S THE SAME, IT'S IN THE SAME FILE,

01:39:00 7   SO I DID SEE THAT.

01:39:01 8   BUT I PROVIDED AN ANALYSIS IN MY APPENDIX, A DETAILED

01:39:05 9   ANALYSIS FOR SIX, AND ONLY SIX OF THOSE PRESCRIBED COMMANDS.

01:39:09 10   Q.   SO JUST TO TAKE AN EXAMPLE, IF WE LOOK AT THE LAST COMMAND

01:39:15 11   IN EXHIBIT 599, YOU DIDN'T REVIEW THE SOURCE CODE FOR THE LAST

01:39:19 12   COMMAND; RIGHT?

01:39:21 13   A.   I'M SORRY. YEAH. THAT'S CORRECT.

01:39:29 14   Q.   OKAY. AND IN FACT, WHEN I ASKED YOU AT YOUR DEPOSITION

01:39:38 15   WHAT THIS COMMAND ACTUALLY DOES, YOU COULDN'T SAY WHAT IT DID

01:39:41 16   AT ALL; RIGHT?

01:39:41 17   A.   THAT'S PROBABLY TRUE.

01:39:42 18   Q.   AND THIS ISN'T AN ISOLATED INCIDENT; RIGHT, I ASKED YOU

01:39:46 19   ABOUT ANOTHER COMMAND ON DR. JEFFAY'S LIST "HOW HSC DETAIL

01:39:52 20   OVSDB," AND YOU DON'T KNOW WHAT THAT ONE DOES EITHER; RIGHT?

01:39:55 21   A.   NO.

01:39:55 22   Q.   SO I WANT TO TURN BRIEFLY TO YOUR SECOND OPINION THAT EOS

01:40:01 23   DOES NOT ASSIGN COMMAND ACTION VALUES TO EVERY WORD IN THE

01:40:05 24   COMMAND; DO YOU RECALL THAT?

01:40:07 25   A.   YES.

01:40:08 1   Q.   YOU DIDN'T MENTION IN YOUR TESTIMONY THAT CONTEXT.STATE

01:40:15 2   VARIABLE THAT DR. JEFFAY TALKED ABOUT, DID YOU?

01:40:17 3   A.   NO.

01:40:18 4   Q.   AND SO YOU DIDN'T PRESENT ANY TESTIMONY ABOUT WHAT THAT

01:40:23 5   VARIABLE COMPRISES; RIGHT?

01:40:29 6   A.   NO.

01:40:30 7   Q.   BUT YOU ARE FAMILIAR WITH THAT AND OPINED ABOUT THAT AS

01:40:33 8   PART OF YOUR EXPERT REPORT; RIGHT?

01:40:35 9   A.   YES.

01:40:35 10   Q.   THE EOS PARSER, IT PARSES EACH WORD ONE AT A TIME; RIGHT?

01:40:41 11   A.   YES.

01:40:42 12   Q.   AND DURING PARSING, THIS CONTEXT OBJECT THAT DR. JEFFAY

01:40:46 13   TALKED ABOUT, IT EXISTS FOR EACH ACTIVE RULE AND IS LINKED TO

01:40:51 14   THE RULE; RIGHT?

01:40:52 15   A.   YES.

01:40:53 16   Q.   AND WHEN EOS IS PARSING A COMMAND, AT ANY GIVEN TIME, THIS

01:40:59 17   CONTEXT.STATE WILL CONTAIN A LIST OF RULES THAT STILL COULD

01:41:03 18   POTENTIALLY BE MATCHED; RIGHT?

01:41:05 19   A.   SORRY, WHICH CONTEXT.STATE?

01:41:08 20   Q.   FOR AN ACTIVE "OR" RULE, IN PARTICULAR.

01:41:11 21   A.   FOR AN ACTIVE "OR" RULE, YES.

01:41:13 22   Q.   AND THEN AFTER EACH INDIVIDUAL WORD IS PARSED THIS

01:41:20 23   CONTEXT.STATE IS UPDATED; RIGHT?

01:41:21 24   A.   YES, IN THE CASE OF AN "OR" RULE, AS EACH "OR" IS PARSED,

01:41:27 25   THE CONTEXT.STATE IS UPDATED IN THAT WAY.

01:41:30 1   Q.   SO THIS IS UPDATED IN A PER-WORD BASIS; RIGHT?

01:41:35 2   A.   IT'S UPDATED AS EACH -- YEAH, SURE, A PER-WORD BASIS.

01:41:38 3   Q.   AND YOU PROVIDED SOME TESTIMONY REGARDING WHETHER EOS

01:41:41 4   ACCEPTS INVALID COMMANDS; DO YOU REMEMBER THAT?

01:41:44 5   A.   YES.

01:41:44 6   Q.   YOU DON'T DISPUTE DR. JEFFAY'S OPINIONS THAT EOS WILL

01:41:48 7   ACCEPT TRUNCATED COMMANDS AND CORRECTLY PARSE THEM IN SOME

01:41:53 8   INSTANCES; RIGHT?

01:41:55 9   A.   WELL, IT WILL ACCEPT COMMANDS THAT HAVE A WORD THAT IS AN

01:42:01 10   UNAMBIGUOUS PREFIX OF A VALID COMMAND WORD.

01:42:06 11   Q.   OKAY. IF WE CAN JUST PUT UP DR. JEFFAY'S SLIDE NUMBER 56.

01:42:12 12   AND THIS EXHIBIT CITED HERE, EXHIBIT 31 IS ALREADY IN EVIDENCE.

01:42:17 13   IT SAYS HERE IN EXHIBIT 31, "SEE? JUST LIKE IOS, EVEN

01:42:20 14   DOWN TO THE BEHAVIOR OF TRUNCATED COMMANDS BEING ACCEPTED."

01:42:24 15   DO YOU SEE THAT?

01:42:26 16   A.   YES, TRUNCATED COMMANDS WITH A SINGLE WORD, YES.

01:42:31 17   Q.   AND YOU DON'T DISPUTE THAT THIS FUNCTIONALITY EXISTS IN

01:42:33 18   EOS; RIGHT?

01:42:34 19   A.   WELL, THIS JUST SAYS THAT IT WILL -- NO, I DON'T DISPUTE

01:42:38 20   IT.

01:42:38 21   Q.   OKAY. SO THE LAST TOPIC I WANT TO TOUCH ON BRIEFLY IS

01:42:43 22   SOMETHING CALLED EOS PLUS.

01:42:45 23   A.   YES.

01:42:45 24   Q.   DO YOU KNOW WHAT EOS PLUS IS?

01:42:47 25   A.   I DON'T RECALL, SPECIFICALLY, WHAT EOS PLUS IS AND WHAT

01:42:54 1   DISTINGUISHES IT FROM OTHER VERSIONS OF EOS.

01:42:55 2   Q.   EOS PLUS IS A SOFTWARE PLATFORM FOR NETWORK

01:42:58 3   PROGRAMMABILITY; RIGHT?

01:43:00 4   A.   ALL THE VERSIONS OF EOS, THAT DESCRIPTION WOULD MATCH ALL

01:43:04 5   THE VERSIONS OF EOS.

01:43:06 6   Q.   OKAY. SO YOU ARE NOT FAMILIAR WITH EOS IN PARTICULAR AND

01:43:11 7   ARISTA DESCRIBING IT AS A SOFTWARE PLATFORM FOR NETWORK

01:43:15 8   PROGRAMMABILITY, ARE YOU?

01:43:17 9   A.   WELL, EOS IS A PLATFORM FOR NETWORK PROGRAMMABILITY, YES.

01:43:25 10   I DON'T RECALL SPECIFICALLY THAT DESCRIPTION OF THE EOS PLUS,

01:43:29 11   NO.

01:43:29 12   Q.   OKAY. IF YOU COULD TURN IN YOUR WITNESS BINDER TO

01:43:33 13   EXHIBIT 558.

01:43:40 14   A.   YES.

01:43:41 15   Q.   AND IF YOU COULD TURN TO PAGE 25 -- WELL, ACTUALLY BEFORE

01:43:45 16   I GET THERE, IS THIS THE TYPE OF DOCUMENT THAT YOU SOMETIMES

01:43:49 17   REFER TO IN YOUR ANALYSIS DESCRIBING ARISTA'S EOS?

01:43:54 18   A.   YES.

01:43:55 19   Q.   OKAY.

01:43:59 20   MR. JAFFE: YOUR HONOR, I WOULD LIKE TO MOVE IT IN

01:44:01 21   EXHIBIT 558 INTO EVIDENCE.

01:44:03 22   THE COURT: ANY OBJECTION?

01:44:05 23   MR. KRISHNAN: NO OBJECTION.

01:44:06 24   THE COURT: IT WILL BE ADMITTED.

01:44:16 25   (PLAINTIFF'S EXHIBIT 558 WAS ADMITTED INTO EVIDENCE.)

01:44:16 1   BY MR. JAFFE:

01:44:16 2   Q.   YOU WILL SEE THERE'S A SECTION THERE SOFTWARE AND

01:44:18 3   TECHNOLOGY INDUSTRY SPECIFIC SERVICES; DO YOU SEE THAT?

01:44:21 4   A.   YES.

01:44:21 5   Q.   AND DO YOU SEE THE FIRST SENTENCE WHERE IT SAYS EOS PLUS

01:44:24 6   IS A SOFTWARE PLATFORM FOR NETWORK PROGRAMMABILITY; DO YOU SEE

01:44:27 7   THAT?

01:44:30 8   A.   YES.

01:44:30 9   Q.   AND YOU AGREE WITH THAT, DON'T YOU?

01:44:32 10   A.   I TESTIFIED THAT I DON'T RECALL SPECIFIC DETAILS OF THE

01:44:36 11   EOS PLUS AS DISTINCT FROM OTHER VERSIONS OF EOS. BUT ARISTA

01:44:40 12   SAYS IT HERE, I HAVE NO REASON TO DISAGREE WITH IT.

01:44:42 13   MR. JAFFE: OKAY. I HAVE NO FURTHER QUESTIONS.

01:44:45 14   THE COURT: THANK YOU.

01:44:46 15   REDIRECT?

01:45:32 16   (OFF-THE-RECORD DISCUSSION.)

01:45:35 17   **REDIRECT EXAMINATION**

01:45:37 18   BY MR. KRISHNAN:

01:45:38 19   Q.   DR. CHASE, I JUST WANT TO ASK YOU BRIEFLY ABOUT THIS SLIDE

01:45:42 20   THAT WAS PUT UP AND THE QUESTIONS THAT YOU WERE ASKED ABOUT THE

01:45:46 21   FACT THAT EOS COMMANDS THAT ARE TRUNCATED PREFIXES OF

01:45:57 22   PARTICULAR COMMAND WORDS.

01:45:58 23   CAN YOU EXPLAIN WHAT YOU MEANT BY THAT?

01:46:00 24   A.   WELL, I JUST MEAN THAT WHILE IT'S PARSING A COMMAND, WHEN

01:46:03 25   EOS SEES A COMMAND WORD, IF IT -- IT DOESN'T HAVE TO BE A

01:46:08 1   COMPLETE COMMAND WORD, IT CAN BE A PREFIX OF A COMMAND WORD, AS

01:46:10 2   LONG AS THAT PREFIX ALSO -- DOESN'T ALSO APPEAR AS A PREFIX OF

01:46:17 3   ANOTHER COMMAND WORD.

01:46:18 4   IT'S ENOUGH FOR EOS TO KNOW WHAT THAT COMMAND WORD MEANS,

01:46:22 5   WHICH COMMAND WORD IT IS.

01:46:23 6   Q.   OKAY. IS THAT FUNCTIONALITY AT ALL RELATED TO THE

01:46:28 7   FUNCTIONALITY YOU DESCRIBED WITH RESPECT TO THE '526 PATENT

01:46:34 8   REGARDING THE ABILITY TO HANDLE COMMANDS WITH MISSING OR

01:46:38 9   INVALID WORDS?

01:46:39 10   A.   NO. THIS IS A CHARACTER BY CHARACTER KIND OF FUNCTION

01:46:43 11   THAT'S JUST IN RECOGNIZING WHAT THE WORDS ARE, NOT IN THE

01:46:47 12   PARSING WHICH IS RECOGNIZING HOW THE WORDS RELATE TO ONE

01:46:50 13   ANOTHER TO FORM A COMPLETE COMMAND.

01:46:53 14   IT'S A DIFFERENT TECHNOLOGY, IT'S NOT WHAT THE '526 PATENT

01:46:57 15   DESCRIBES, AND I BELIEVE THAT THE INVENTOR'S TESTIMONY SUPPORTS

01:47:04 16   THAT.

01:47:05 17   AND IN FACT, I BELIEVE THERE'S ANOTHER PATENT THAT CISCO

01:47:09 18   HAS THAT COVERS THAT TECHNOLOGY.

01:47:11 19   Q.   OKAY. NOW DOES THE EXISTENCE OF THIS FEATURE WITHIN EOS,

01:47:17 20   THE ABILITY TO RECOGNIZE TRUNCATED PREFIXES OF INDIVIDUAL

01:47:22 21   WORDS, DOES THAT EFFECT AT ALL, YOUR OPINION THAT EOS ONLY

01:47:27 22   ASSIGNS COMMAND ACTION VALUES TO COMPLETE COMMANDS AS OPPOSED

01:47:30 23   TO SPECIFIC WORDS?

01:47:32 24   A.   NO.

01:47:32 25   Q.   OKAY. AND I WANT TO TOUCH BRIEFLY ON SOME QUESTIONING

01:47:36 1   THAT YOU RECEIVED RIGHT AT THE VERY BEGINNING.

01:47:39 2   I THINK THERE WAS TESTIMONY THAT YOU WERE NOT ABLE TO

01:47:43 3   IDENTIFY ANY OTHER MANAGEMENT PROGRAM EVER, OR SOMETHING TO

01:47:48 4   THAT EFFECT; IS THAT RIGHT?

01:47:50 5   A.   YES.

01:47:50 6   Q.   AND WHY IS IT THAT YOU CANNOT IDENTIFY ANY OTHER

01:47:53 7   MANAGEMENT PROGRAM EVER?

01:47:55 8   A.   WELL, AS I SAID, THE IDEA OF A MANAGEMENT PROGRAM, AND YOU

01:47:59 9   KNOW, WHAT DO AND DO NOT CONSTITUTE MANAGEMENT FUNCTIONS, IS

01:48:05 10   SOMETHING THAT HAS TO BE EVALUATED IN THE CONTEXT OF A WHOLE

01:48:08 11   SYSTEM.

01:48:08 12   AND AGAIN, DR. JEFFAY AND I AGREE ON THIS, THERE WAS AN

01:48:11 13   EXTENDED DISCUSSION ABOUT IT DURING DR. JEFFAY'S DEPOSITION IN

01:48:13 14   WHICH HE EXPLAINED ALL OF THIS.

01:48:15 15   AND I JUST -- SITTING AT MY DEPOSITION AND SITTING HERE

01:48:20 16   NOW, I DON'T WANT TO BE -- I'M WILLING TO OFFER OPINIONS ABOUT

01:48:23 17   EOS, WHICH I'VE ANALYZED, BUT I DON'T WANT TO OFFER ANY

01:48:28 18   OPINIONS ABOUT ANY OTHER SYSTEM I HAVEN'T ANALYZED AND WHAT

01:48:31 19   DOES AND DOES NOT CONSTITUTE A MANAGEMENT PROGRAM UNDER THE

01:48:33 20   COURT'S CONSTRUCTION IN ANY OTHER SYSTEM.

01:48:37 21   Q.   PUTTING ASIDE EOS AND IOS XR, DID DR. JEFFAY IDENTIFY ANY

01:48:41 22   MANAGEMENT PROGRAMS EVER IN ANY OTHER SYSTEM?

01:48:44 23   A.   I DON'T RECALL THAT HE DID.

01:48:47 24   Q.   OKAY. AND --

01:48:52 25   MR. KRISHNAN: I THINK THAT'S ACTUALLY ALL,

01:48:54 1   YOUR HONOR.

01:48:54 2   THE COURT: MR. JAFFE, DID YOU HAVE ANYTHING ELSE?

01:48:59 3   MR. JAFFE: NOTHING FURTHER, YOUR HONOR.

01:49:02 4   THE COURT: DR. CHASE, THANK YOU FOR YOUR TESTIMONY.

01:49:04 5   YOU ARE FREE TO GO.

01:49:15 6   MR. VAN NEST: YOUR HONOR, AT THIS TIME ARISTA

01:49:16 7   NETWORKS CALLS MR. MICHAEL VOLPI.

01:49:21 8   THE WITNESS: ALL RIGHT.

01:49:22 9   IS MR. VOLPI IN THE COURTROOM? ALL RIGHT.

01:49:24 10   MR. VOLPI, IF YOU WOULD COME FORWARD TO THE WITNESS STAND,

01:49:27 11   PLEASE, AND STAND TO BE SWORN.

01:49:36 12   **(DEFENDANT'S WITNESS, MICHAEL VOLPI, WAS SWORN.)**

01:49:37 13   THE WITNESS: YES.

01:49:43 14   MR. VAN NEST: AND YOUR HONOR, WE HAVE A COUPLE OF

01:49:45 15   BINDERS AS WELL.

01:49:46 16   THE COURT: OKAY.

01:49:48 17   THE CLERK: IF YOU WOULD PLEASE STATE YOUR NAME AND

01:49:50 18   SPELL YOUR LAST NAME FOR THE RECORD.

01:49:52 19   THE WITNESS: MY NAME IS MICHAEL ANGELO VOLPI. LAST

01:49:56 20   NAME IS SPELLED V-O-L-P-I.

01:49:58 21   THE COURT: GOOD AFTERNOON.

01:49:59 22   THE WITNESS: GOOD AFTERNOON.

01:50:00 23   **DIRECT EXAMINATION**

01:50:00 24   BY MR. VAN NEST:

01:50:01 25   Q.   GOOD AFTERNOON, MR. VOLPI. WOULD YOU PLEASE INTRODUCE

01:50:03 1   YOURSELF TO OUR JURORS.

01:50:04 2   A.   GOOD AFTERNOON.   MY NAME IS MICHAEL VOLPI.   IT'S A

01:50:08 3   PLEASURE TO MEET YOU.

01:50:08 4   Q.   ARE YOU AN ENGINEER?

01:50:09 5   A.   BY TRAINING I AM, YES.

01:50:10 6   Q.   OKAY.   AND ALSO A BUSINESSMAN?

01:50:12 7   A.   I TRY TO BE A BUSINESSMAN.

01:50:15 8   Q.   AND AT SOME TIME IN THE PAST, DID YOU WORK AT CISCO?

01:50:18 9   A.   I DID.   I WORKED FOR CISCO FOR APPROXIMATELY 13 YEARS.

01:50:21 10   Q.   AND CAN YOU TELL THE JURY WHEN YOU STARTED WORKING AT

01:50:26 11   CISCO AND WHEN YOU FINISHED?

01:50:27 12   A.   I STARTED WORKING AT CISCO IN 1994 WHEN I GRADUATED FROM

01:50:33 13   BUSINESS SCHOOL, AND I WAS EMPLOYED THERE UNTIL 2007 AT WHICH

01:50:36 14   POINT I LEFT THE COMPANY.

01:50:37 15   Q.   OKAY.   LET'S GO BACK JUST A LITTLE BIT.   CAN YOU TELL THE

01:50:43 16   JURORS A LITTLE ABOUT YOUR PERSONAL BACKGROUND AND HOW YOU GOT

01:50:47 17   HERE?

01:50:47 18   A.   SURE.   I WAS ORIGINALLY BORN IN ITALY.   I LIVED THERE FOR

01:50:51 19   THE FIRST SIX YEARS OF MY LIFE.

01:50:53 20   MY PARENTS WORKED.   MY FATHER WORKED AND HAD US TRAVEL TO

01:50:56 21   JAPAN WHERE I LIVED WITH MY PARENTS FOR 12 YEARS.   I FINISHED

01:51:02 22   MY HIGH SCHOOL EDUCATION THERE.   AND THEN I CAME TO STUDY

01:51:05 23   COLLEGE IN THE UNITED STATES.

01:51:08 24   I STUDIED AS AN ENGINEER, MECHANICAL ENGINEER.   I WORKED

01:51:12 25   AT HEWLETT-PACKARD FOR THREE YEARS AFTER I GRADUATED.   I WENT

01:51:17   1   BACK AND GOT A MASTER'S DEGREE IN BUSINESS, AND THEN AFTER I

01:51:20   2   WORKED FOR CISCO.

01:51:21   3   Q.   TERRIFIC. AND WHAT DO YOU DO FOR A LIVING TODAY?

01:51:24   4   A.   I'M NOW A VENTURE CAPITALIST. I INVEST IN TECHNOLOGY

01:51:31   5   STARTUPS IN THE RELATIVELY EARLY STAGES OF THEIR CREATION.

01:51:33   6   Q.   AND WHAT IS THE NAME OF THE COMPANY THAT YOU WORK WITH?

01:51:35   7   A.   I WORK FOR INDEX VENTURES.

01:51:37   8   Q.   IS INDEX AN INVESTOR IN ARISTA?

01:51:41   9   A.   AT THIS POINT IN TIME, WE ARE NOT INVESTORS IN ARISTA

01:51:45   10   NETWORKS.

01:51:45   11   Q.   WAS INDEX AN INVESTOR IN ARISTA AT SOME POINT IN THE PAST?

01:51:49   12   A.   WE WERE. WE WERE INVESTORS IN ARISTA NETWORKS FOR A

01:51:53   13   PERIOD ABOUT A YEAR BEFORE THE PUBLIC OFFERING OF ARISTA UNTIL

01:51:57   14   A YEAR AFTER THE PUBLIC OFFERING OF ARISTA.

01:51:59   15   Q.   SO THAT'S ROUGHLY FROM 2013 TO SOME TIME IN 2015?

01:52:03   16   A.   I THINK THAT'S APPROXIMATELY CORRECT.

01:52:05   17   Q.   AND DOES INDEX OWN ANY INTEREST AT ALL IN ARISTA TODAY?

01:52:08   18   A.   WE DO NOT OWN ANY INTEREST IN ARISTA.

01:52:11   19   Q.   ARE YOU APPEARING HERE TODAY BY VIRTUE OF A SUBPOENA?

01:52:13   20   A.   YES, I AM.

01:52:14   21   Q.   MR. VOLPI, LET'S ORIENT OUR JURORS A LITTLE BIT.

01:52:20   22   CAN YOU JUST WALK THROUGH YOUR BUSINESS CAREER AT CISCO,

01:52:23   23   STARTING BACK IN 1994. WHAT POSITIONS DID YOU HOLD AND WHAT

01:52:28   24   RESPONSIBILITIES DID YOU TAKE ON THERE?

01:52:29   25   A.   SURE. I STARTED OFF AS A, WHAT THEY CALLED A BUSINESS

01:52:34   1   DEVELOPMENT MANAGER. EVEN THOUGH I'M AN ENGINEER BY

01:52:38   2   BACKGROUND, I STUDIED MECHANICAL ENGINEERING, WHICH IS A LITTLE

01:52:41   3   BIT DIFFERENT THAN THE NETWORKING TECHNOLOGY THAT CISCO MAKES.

01:52:45   4   SO I WENT TO WORK FOR CISCO IN MORE OF A BUSINESS FUNCTION

01:52:48   5   AND NOT A TECHNICAL FUNCTION.

01:52:51   6   FROM 1994, WHEN I STARTED IN THE SUMMER OF 1994, MY ROLE

01:52:56   7   AS A BUSINESS DEVELOPMENT MANAGER WAS TO HELP THE COMPANY WITH

01:53:00   8   SOME OF THE ACQUISITIONS IT MADE. SO CISCO ACQUIRED A NUMBER

01:53:03   9   OF COMPANIES FOR QUITE A FEW YEARS THERE.

01:53:09   10   I ALSO MADE SOME KEY INVESTMENTS IN OTHER COMPANIES. AND

01:53:13   11   WE HAD PARTNERSHIPS AND VARIOUS OTHER ALLIANCES, ALL OF WHICH I

01:53:17   12   WAS, ONE WAY OR ANOTHER, INVOLVED WITH.

01:53:19   13   A COUPLE OF YEARS LATER, I WAS PROMOTED TO THE DIRECTOR OF

01:53:24   14   THE GROUP, SO I WAS THE BUSINESS DEVELOPMENT DIRECTOR.

01:53:27   15   A COUPLE OF YEARS AFTER THAT I BECAME THE VICE PRESIDENT

01:53:30   16   OF THE GROUP AND MANAGED THE WHOLE GROUP. THEN THEY PROMOTED

01:53:34   17   ME TO SENIOR VICE PRESIDENT, AND THEN I ENDED MY CAREER IN THAT

01:53:37   18   FUNCTION AS CHIEF STRATEGY OFFICER OF CISCO. SO I REPORTED TO

01:53:41   19   THE CEO, AT THE TIME, IN 2001.

01:53:43   20   Q.   LET ME JUST STOP YOU THERE. YOU REPORTED TO THE CEO,

01:53:47   21   THAT'S MR. CHAMBERS?

01:53:48   22   A.   YES.

01:53:48   23   Q.   HE WAS THE CEO THEN?

01:53:50   24   A.   YES.

01:53:50   25   Q.   TELL THE JURY, WHAT DOES THE CHIEF STRATEGY OFFICER DO?

01:53:54 1   WHAT'S THAT JOB?

01:53:55 2   A.   THE CHIEF STRATEGY OFFICER'S JOB IS TO LOOK OUT INTO THE

01:54:00 3   FUTURE OF THE KEY DIRECTIONS THAT THE COMPANY IS GOING IN AND

01:54:03 4   TO TRY DELINEATE THE KEY BUSINESS STRATEGIES, WHAT MARKETS WE

01:54:08 5   SHOULD BE GOING AFTER, HOW SHOULD WE ALLOCATE OUR RESOURCES AS

01:54:12 6   A COMPANY, SHOULD WE HIRE MORE ENGINEERS OR MORE SALES PEOPLE,

01:54:16 7   SHOULD WE DEVELOP A PARTICULAR TYPE OF TECHNOLOGY, SHOULD WE

01:54:20 8   PARTNER WITH OTHER PEOPLE TO COLLABORATE ON TECHNOLOGIES.

01:54:23 9   THOSE ARE SORT OF ALL KINDS OF KEY ELEMENTS OF THE STRATEGY.

01:54:26 10   AND MY JOB WAS, IN PART, TO OFFER ADVICE TO THE COMPANY,

01:54:29 11   THE EXECUTIVES OF THE COMPANY AND THE CEO AROUND THE STRATEGY

01:54:33 12   OF THE COMPANY. AND FOR PART OF IT, I HAD MANAGERIAL

01:54:38 13   RESPONSIBILITY FOR THE SAME BUSINESS DEVELOPMENT GROUP I HAD

01:54:40 14   GROWN UP THROUGH IN THE COMPANY.

01:54:42 15   AND I ALSO HAD RESPONSIBILITY FOR A NUMBER OF OTHER

01:54:45 16   FUNCTIONS LIKE THE LEGAL TEAM, I HAD RESPONSIBILITY FOR A

01:54:53 17   NUMBER OF OTHER FUNCTIONS IN THE COMPANY LIKE KEY ALLIANCES,

01:54:58 18   THE LEGAL TEAM, SOME EARLY STAGE ADVANCED DEVELOPMENT.

01:55:01 19   SO A RANGE OF OTHER FUNCTIONS IN THE COMPANY, BUT THAT WAS

01:55:05 20   THE RANGE OF MY RESPONSIBILITIES.

01:55:07 21   Q.   AT SOME POINT DID YOU BECOME INVOLVED AS A VICE PRESIDENT

01:55:12 22   OF ETHERNET SWITCHING OR SENIOR VICE PRESIDENT OF ETHERNET

01:55:16 23   SWITCHING?

01:55:16 24   A.   AS I WAS MENTIONING UP TO 2001, I HAD THIS ROLE OF CHIEF

01:55:20 25   STRATEGY OFFICER. AND THEN IN 2001 I WAS MOVED TO A DIFFERENT

01:55:25 1   PART OF THE COMPANY TO MANAGE THE ETHERNET SWITCHING GROUP THAT

01:55:31 2   MR. VAN NEST MENTIONED.

01:55:34 3   THERE I WAS RESPONSIBLE -- THE ROLE WAS THE GENERAL

01:55:37 4   MANAGER OF ETHERNET SWITCHING. SO I WAS RESPONSIBLE FOR THE

01:55:41 5   ENGINEERING EFFORTS OF THE ETHERNET SWITCHING PRODUCT LINES,

01:55:44 6   AND ALSO THE PRODUCT MANAGEMENT AND MARKETING RESPONSIBILITIES

01:55:49 7   FOR THOSE.

01:55:50 8   SO I SWITCHED FROM PROVIDING OTHER PEOPLE ADVICE, TO

01:55:53 9   BASICALLY HELPING THE DEVELOPMENT AND THE CREATION OF THESE

01:55:55 10   PRODUCTS.

01:55:55 11   Q.   AND FOLLOWING THAT, JUST TAKE US ON THROUGH TO THE END OF

01:56:00 12   YOUR CAREER AT CISCO IN 2007.

01:56:02 13   A.   SURE.

01:56:03 14   SO I MANAGED THAT ETHERNET SWITCHING GROUP AS SENIOR VICE

01:56:07 15   PRESIDENT AND GENERAL MANAGER FOR APPROXIMATELY TWO TO

01:56:10 16   THREE YEARS. I DON'T HAVE AN EXACT RECOLLECTION OF THE LENGTH

01:56:12 17   OF TIME THERE.

01:56:14 18   THEN I WAS -- SWITCHED ROLES AGAIN TO MANAGING A DIFFERENT

01:56:18 19   PART OF THE PRODUCTS IN THE COMPANY. SO THAT WAS FROM ABOUT

01:56:22 20   2004 TO 2007. I MANAGED ROUTING, WHICH WAS THE ORIGINAL

01:56:28 21   PRODUCT LINE AT CISCO, AS WELL AS ALL OF THE PRODUCTS THAT ARE

01:56:32 22   SOLD TO THE TELECOM OPERATORS, LIKE AT&T AND VERIZON, ALL THE

01:56:36 23   PRODUCTS THAT WE MADE FOR THOSE TYPES OF BIG CUSTOMERS, I WAS

01:56:39 24   RESPONSIBLE FOR ENGINEERING, MARKETING AND THE PRODUCT

01:56:43 25   MANAGEMENT OF THOSE.

VOLPI DIRECT EXAM BY MR. VAN NEST

01:56:44 1   Q.   AND IN YOUR POSITIONS IN THE ETHERNET SWITCHING GROUP AND

01:56:49 2   THE ROUTING GROUP, WHO DID YOU REPORT TO IN THOSE POSITIONS?

01:56:53 3   A.   DIFFERENT PEOPLE AT DIFFERENT TIMES.

01:56:57 4   SO I REPORTED FOR SOME PERIOD OF TIME TO CHARLIE

01:57:02 5   GIANCARLO, WHO WAS THE CHIEF DEVELOPMENT OFFICER, I THINK WAS

01:57:05 6   HIS TITLE.

01:57:06 7   I REPORTED TO MARIO MAZZOLA, ALSO FOR SOME PERIOD OF THAT

01:57:11 8   TIME. I THINK THOSE WERE THE TWO PRIMARY MANAGERS THAT I HAD.

01:57:14 9   Q.   OKAY. NOW I WANT TO FOCUS ON YOUR WORK AS A SENIOR VP

01:57:21 10   AFTER YOUR CHIEF STRATEGY OFFICER JOBS, ACTUALLY RUNNING UNITS

01:57:27 11   SELLING SWITCHES OR ROUTERS.

01:57:29 12   DID YOU HAVE OCCASION DURING THAT PERIOD TO TALK WITH

01:57:32 13   CUSTOMERS?

01:57:32 14   A.   I SPOKE TO CUSTOMERS QUITE FREQUENTLY.

01:57:35 15   Q.   AND CAN YOU TELL THE JURORS, GIVE THEM SOME IDEA, HOW

01:57:39 16   OFTEN DID YOU TALK TO CUSTOMERS AND WHAT WOULD BE THE

01:57:43 17   CIRCUMSTANCES UNDER WHICH YOU WOULD DO THAT?

01:57:45 18   A.   SURE. IN SORT OF IN A NUT SHELL, OUR SALES PEOPLE AT THE

01:57:48 19   COMPANY WERE OBVIOUSLY THE ONES THAT WERE MOST RESPONSIBLE FOR

01:57:51 20   TALKING TO THOSE CUSTOMERS.

01:57:53 21   THE SALES -- AND THESE PRODUCTS WERE OBVIOUSLY VERY

01:57:56 22   TECHNICAL AND COMPLICATED TO UNDERSTAND. OUR SALES PEOPLE

01:58:02 23   WOULD ENGAGE IN DAY-TO-DAY CONVERSATION WITH THOSE CUSTOMERS,

01:58:06 24   AND OUR CUSTOMERS OBVIOUSLY WOULD ALSO BE VERY, VERY TECHNICAL

01:58:10 25   AND SAVVY.

01:58:10 1   SO FROM TIME TO TIME, THE SALES PEOPLE WOULD ASK US PEOPLE

01:58:16 2   RESPONSIBLE FOR MAKING THE PRODUCTS TO COME AND TO VISIT WITH

01:58:20 3   THOSE CUSTOMERS TO TALK TO THEM ABOUT A RANGE OF MORE

01:58:25 4   PRODUCT-ORIENTED TOPICS.

01:58:27 5   AND THOSE TOPICS RANGED FROM, WHAT ARE OUR FUTURE

01:58:32 6   DEVELOPMENTS, WHAT ARE WE DOING IN THE FUTURE, HOW ARE WE GOING

01:58:35 7   TO ENHANCE OR IMPROVE OUR PRODUCTS, HOW DO OUR PRODUCTS WORK,

01:58:40 8   WHY IS IT THAT THEY HAVE CERTAIN FUNCTIONS BUT THEY DON'T HAVE

01:58:43 9   OTHER FUNCTIONS. SO ALL OF THOSE SORT OF PRODUCT-CENTRIC

01:58:49 10   CONVERSATIONS.

01:58:49 11   WE WOULD GET INVITED AND WE WOULD TRAVEL SOMETIMES TO THE

01:58:54 12   EAST COAST OR MID-WEST AND VISIT OTHER PARTS OF THE WORLD TO

01:58:57 13   VISIT THOSE CUSTOMERS AND TALK TO THEM.

01:58:59 14   AND OBVIOUSLY ONE OF THE INTENTIONS OF THE SALES PEOPLE

01:59:01 15   WAS TO, YOU KNOW, ESSENTIALLY DEVELOP LARGER LONG-TERM

01:59:05 16   RELATIONSHIPS WITH THOSE CUSTOMERS BECAUSE IT HELPED THEM SELL.

01:59:08 17   SO THAT WAS PART OF OUR JOB IN MAINTAINING THOSE

01:59:12 18   RELATIONSHIPS WITH CUSTOMERS.

01:59:12 19   Q.   OKAY. AND LET'S TALK JUST FOR A MINUTE ABOUT THE

01:59:17 20   COMMAND-LINE INTERFACE AT CISCO.

01:59:19 21   DURING YOUR TENURE IN ETHERNET SWITCHING AND ROUTING, DID

01:59:22 22   YOU DEVELOP SOME FAMILIARITY WITH THE CISCO CLI, WHAT'S CALLED

01:59:27 23   THE CISCO CLI?

01:59:27 24   A.   YES, I DID DEVELOP SOME.

01:59:30 25   Q.   AND HOW DID THAT PLAY A ROLE AT YOUR JOB?

01:59:33 1   A.   SO MY FAMILIARITY STARTED DEVELOPING FROM THE EARLY DAYS

01:59:45 2   WHEN I WAS EMPLOYED AT CISCO. THE DAY I STARTED, THEY ASKED TO

01:59:48 3   DO SOME TRAINING TO BETTER DEVELOP THE EDUCATIONAL PROCESS OF

01:59:51 4   MANAGING THOSE ROUTERS THAT THE COMPANY USED TO BUILD.

01:59:54 5   I ALSO PERSONALLY GOT MORE INTERESTED IN THE TECHNOLOGY, I

01:59:57 6   THOUGHT IT WOULD BE GOOD FOR MY JOB TO LEARN IT, SO I TOOK SOME

02:00:00 7   COURSES OUTSIDE OF WORK TO BETTER UNDERSTAND NETWORKING.

02:00:02 8   AND, OBVIOUSLY, ONE OF THE KEY COMPONENTS AROUND THAT IS

02:00:05 9   TO UNDERSTAND A COMMAND-LINE INTERFACE, SO I DID.

02:00:09 10   MY JOB -- I HAD NEVER PERFORMED AN ENGINEERING TASK AT

02:00:13 11 CISCO. I MANAGED ENGINEERS, BUT I NEVER PERFORMED IT. SO I

02:00:16 12 NEVER WORKED ON THE DEVELOPMENT OF THEM. AND I WAS NOT IN A

02:00:19 13 POSITION TO ADMINISTER NETWORKS THE WAY THE CUSTOMER WOULD.

02:00:24 14   SO I NEVER ACTUALLY PROFESSIONALLY ENGAGED IN USING THE

02:00:28 15 CLI ON A PRODUCTION OR A PROFESSIONAL BASIS. BUT I UNDERSTOOD

02:00:32 16 WHAT IT WAS.

02:00:33 17   OCCASIONALLY, I WOULD TYPE IN A FEW COMMANDS TO UNDERSTAND

02:00:36 18 HOW THE PRODUCTS WORK AND WHAT THEY DID, AND JUST TO KIND OF

02:00:40 19 KEEP MYSELF FAMILIAR WITH IT.

02:00:42 20   SO THAT WAS GENERALLY MY LEVEL OF INVOLVEMENT IN THE CLI.

02:00:47 21 Q.   AND DID THE CLI COME UP IN CONNECTION WITH DISCUSSIONS

02:00:50 22 ABOUT MANAGING NETWORKS AS PART OF THE UNITS, THE SWITCHING

02:00:54 23 UNITS AND THE ROUTING UNITS?

02:00:55 24 A.   YEAH. THE CLI WAS VERY IMPORTANT, STRATEGICALLY, TO THE

02:01:01 25 COMPANY BECAUSE IT'S KIND OF LIKE, YOU KNOW, IF IN A PHONE YOU

02:01:05   1   TAB AND MOVE ICONS AROUND AND APPS AROUND, FOR A ROUTER THAT'S

02:01:09   2   HOW YOU TALK TO IT, YOU ISSUE COMMANDS TO THE ROUTER OR THE

02:01:12   3   SWITCH BY TALKING TO IT THROUGH THE COMMAND-LINE INTERFACE.

02:01:15   4   SO ANY CAPABILITY THAT THE ENGINEERS DEVELOPED OR CREATED,

02:01:20   5   WERE CONTROLLED THROUGH THIS COMMAND-LINE INTERFACE. AND IT

02:01:26   6   WAS IMPORTANT BECAUSE THAT'S THE PRINCIPAL WAY IN WHICH OUR

02:01:28   7   CUSTOMERS, AT LEAST INITIALLY, MOST OF OUR CUSTOMERS WOULD TALK

02:01:31   8   TO THE DEVICES, TO THE PRODUCTS WE CREATED.

02:01:37   9   SO AS A RESULT OF IT, IT WAS AN IMPORTANT ELEMENT OF WHAT

02:01:41   10   WE DID.

02:01:41   11   Q.   NOW MR. VOLPI, WERE THERE COMPETITIVE MARKETING TEAMS AT

02:01:47   12   CISCO THERE DURING YOUR TENURE?

02:01:49   13   A.   YES, THERE WERE.

02:01:50   14   Q.   DID YOUR JOB INVOLVE HAVING SOME LEVEL OF FAMILIARITY WITH

02:01:53   15   WHAT THE COMPETITION WAS DOING?

02:01:55   16   A.   YES.

02:01:55   17   Q.   AND HOW WOULD YOU GO ABOUT GATHERING THAT INFORMATION, WHO

02:01:59   18   DID THAT AND HOW WAS IT SHARED WITH YOU?

02:02:02   19   A.   WELL, OBVIOUSLY IN MY PROFESSION YOU COLLECT COMPETITIVE

02:02:05   20   INFORMATION IN MANY DIFFERENT WAYS.

02:02:07   21   ONE OF THE PREDOMINANT WAYS IS BY LISTENING TO YOUR

02:02:11   22   COMPETITIVE MARKETING TEAM, WHICH ARE -- THERE ARE MANY SUCH

02:02:14   23   ORGANIZATIONS INSIDE CISCO. YOU USUALLY BUY PRODUCT.

02:02:17   24   THEY BUY THE PRODUCTS AND TEST THEM, THEY READ THE REVIEWS

02:02:20   25   ABOUT THEM, THEY INTERVIEW CUSTOMERS ABOUT THEM. SO THEY

02:02:23 1   DEVELOP AN UNDERSTANDING OF IT, AND THEY PRODUCE REPORTS AND

02:02:25 2   PRESENTATIONS FOR THE REST OF US TO KIND OF UNDERSTAND A LITTLE

02:02:29 3   BIT OF THE COMPETITIVE DYNAMICS.

02:02:33 4   OBVIOUSLY, WE ALSO, IN ENGAGING WITH CUSTOMERS, WE HEAR

02:02:36 5   DIRECTLY FROM CUSTOMERS AND WE READ OUR OWN STUFF ON THE

02:02:39 6   INTERNET, REPORTS, MAGAZINES, TO BETTER UNDERSTAND WHAT OUR

02:02:42 7   CUSTOMERS ARE DOING.

02:02:43 8   Q.   WHEN YOU WERE RUNNING THE ETHERNET SWITCHING UNIT AT

02:02:46 9   CISCO, WHO WERE YOUR PRIMARY COMPETITORS AT THAT TIME?

02:02:49 10   A.   AT THAT TIME IT WAS COMPANIES LIKE FOUNDRY NETWORKS,

02:02:52 11   EXTREME NETWORKS, 3COM, TO A LESSER DEGREE, THOSE TYPES OF

02:03:00 12   COMPETITORS.

02:03:00 13   Q.   WAS BROCADE A COMPETITOR THEN?

02:03:02 14   A.   NOT YET AT THAT POINT IN TIME.

02:03:04 15   Q.   THAT HAPPENED LATER ON?

02:03:06 16   A.   THAT HAPPENED LATER WHEN THEY ACQUIRED OR MERGED WITH

02:03:09 17   FOUNDRY NETWORKS.

02:03:10 18   Q.   OKAY. AND DID YOU HAVE OCCASION TO REVIEW THESE

02:03:14 19   COMPETITIVE MARKETING REPORTS FROM TIME TO TIME?

02:03:16 20   A.   IT WAS A LONG TIME AGO, BUT I'M SURE I DID. AND I WAS

02:03:20 21   REASONABLY VERSED ON OUR COMPETITIVE POSITIONING.

02:03:24 22   Q.   OKAY. AND WHILE YOU WERE AT CISCO RUNNING THESE LINE

02:03:27 23   UNITS, PRODUCT UNITS, WHAT, IF ANYTHING, DID YOU LEARN ABOUT

02:03:32 24   OTHER COMPETITOR'S USE OF THE CISCO CLI?

02:03:35 25   A.   WELL, CISCO WAS A VERY HIGH MARKET SHARE PLAYER AT THE

02:03:40 1   TIME, PARTICULARLY IN SWITCHING. I DON'T REMEMBER THE EXACT

02:03:42 2   NUMBERS, BUT PROBABLY 65, 70 PERCENT, MAYBE HIGHER, MARKET

02:03:46 3   SHARE.

02:03:47 4   AND SO THE WAY IN WHICH THE COMMAND-LINE INTERFACE WAS

02:03:52 5   USED BY OUR CUSTOMERS IS VERY COMMON PLACE. MOST OF OUR

02:03:56 6   CUSTOMERS KNEW HOW TO USE AND WRITE CISCO COMMAND-LINE

02:03:59 7   INTERFACE.

02:03:59 8   IN SOME SENSE IT WAS, AS WAS TALKED ABOUT, AN INDUSTRY

02:04:05 9   STANDARD, THAT'S THE LANGUAGE EVERYBODY USED TO TALK TO CISCO

02:04:08 10   DEVICES. AND MOST OF OUR COMPETITORS EITHER USED AN EXTREMELY

02:04:12 11   SIMILAR OR SOMEWHAT SIMILAR TYPE OF LANGUAGE TO COMMAND OR

02:04:16 12   CONTROL THEIR DEVICES.

02:04:18 13   Q.   AND BASED ON WHAT YOU LEARNED FROM THE COMPETITIVE

02:04:26 14   ANALYSIS AND DISTRIBUTIONS WITH CUSTOMERS, WAS THAT USE OF A

02:04:29 15   SIMILAR OR VERY SIMILAR COMMAND LINE LIMITED TO A FEW OF YOUR

02:04:33 16   COMPETITORS, OR WAS IT MORE WIDESPREAD?

02:04:35 17   A.   WELL, IN THE BROADEST SENSE, IT WAS ALMOST EVERYBODY THAT

02:04:38 18   COMPETED WITH US THAT USED A SIMILAR LANGUAGE. SOME OF THEM

02:04:42 19   WERE VERY, VERY SIMILAR.

02:04:45 20   YOU KNOW, IF YOU LOOKED AT IT, IT WOULD BE ALMOST

02:04:48 21   IDENTICAL. IN SOME CASES THERE WERE VARIANTS, THEY USED

02:04:52 22   SLIGHTLY DIFFERENT WORDS THAT HAD THE SAME MEANING. BUT

02:04:55 23   BROADLY, IT IS SYNTAX, OR SORT OF THE WAY THE SENTENCES WERE

02:04:58 24   CONSTRUCTED WERE EXTREMELY SIMILAR.

02:05:00 25   AND OFTEN TIMES THE WORDS WERE VERY, VERY SIMILAR. I

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02:05:03   1    WOULDN'T BE ABLE TO IDENTIFY WHETHER IT'S 95 PERCENT OR

02:05:06   2    80 PERCENT, BUT SUFFICE IT TO SAY, IT WAS VERY SIMILAR.

02:05:08   3    Q.   AND DO YOU RECALL THE NAMES OF ANY OF THE COMPETITORS THAT

02:05:13   4    USED THE CISCO CLI, YOU SAY IT'S VIRTUALLY EVERYBODY, BUT WOULD

02:05:18   5    IT INCLUDE THE ONES YOU IDENTIFIED PREVIOUSLY?

02:05:20   6    A.   I DO RECALL, CERTAINLY FOUNDRY NETWORKS'S CLI WAS VERY,

02:05:24   7    VERY SIMILAR, OR AT LEAST THAT WAS WHAT WAS REPORTED TO ME AT

02:05:28   8    THE TIME.  I THINK EXTREME WAS ALSO FAIRLY SIMILAR.

02:05:34   9    Q.   WAS HEWLETT-PACKARD A COMPETITOR AT THAT TIME?

02:05:38  10    A.   YES, THEY WERE.

02:05:39  11    Q.   AND WHAT ABOUT DELL?

02:05:41  12    A.   DELL WAS A COMPETITOR, BUT PROBABLY A QUITE MINOR ONE

02:05:46  13    BECAUSE IT DIDN'T COME UP OFTEN IN CONVERSATION.

02:05:48  14    Q.   NOW WAS THIS TOPIC DISCUSSED INTERNALLY AT CISCO, THIS

02:05:52  15    TOPIC THAT MANY, MANY COMPETITORS ARE USING OUR CLI, IS THIS

02:05:56  16    SOMETHING YOU TALKED ABOUT WITH YOUR MANAGEMENT TEAM?

02:05:59  17    A.   IT CAME UP IN CONVERSATION FROM TIME TO TIME.  I WOULDN'T

02:06:02  18    SAY IT WAS A CENTRAL, YOU KNOW, CRITICAL TOPIC THAT WAS

02:06:05  19    DISCUSSED ON A DAILY BASIS.  BUT FROM TIME TO TIME, AND

02:06:08  20    PARTICULARLY WHEN WE DID THE ANALYSIS OF WHY WE MIGHT HAVE LOST

02:06:11  21    A DEAL OR WHY A COMPETITOR WAS GAINING A FOOTHOLD ON US, WE

02:06:15  22    TALKED ABOUT THE NATURE OF THE CLI AS ONE OF THE ELEMENTS WHICH

02:06:17  23    MATTERED.

02:06:18  24    Q.   AND IS THAT SOMETHING THAT YOU WOULD DISCUSS PERIODICALLY

02:06:22  25    WITH YOUR ENTIRE MANAGEMENT TEAM IN EITHER THE SWITCHING OR THE
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02:06:27   1   ROUTING UNIT?

02:06:28   2   A.   I DON'T HAVE RECOLLECTIONS OF EXACT CONVERSATIONS, BUT I'M

02:06:30   3   QUITE CERTAIN WE HAD A CONVERSATION OF THAT NATURE.

02:06:35   4   Q.   NOW ARE YOU AWARE OF ANY STEPS OR ACTION THAT CISCO TOOK

02:06:38   5   DURING YOUR TENURE AT THE COMPANY TO PREVENT THESE COMPETITORS

02:06:44   6   FROM USING SIMILAR OR IDENTICAL CLI?

02:06:48   7   A.   NOT TO MY KNOWLEDGE.

02:06:51   8   Q.   AND DO YOU KNOW WHY NOT?

02:06:53   9   A.   UMM --

02:06:59   10   Q.   LET ME ASK A DIFFERENT QUESTION.

02:07:00   11   WERE THERE BUSINESS REASONS FOR CISCO NOT TO OBJECT TO

02:07:06   12   COMPETITORS USING THE SAME OR VERY SIMILAR CLI?

02:07:10   13   A.   YOU KNOW, I WOULD SAY THE NOTION OF OTHER PEOPLE USING OUR

02:07:14   14   CLI IS A DOUBLE EDGED SWORD.

02:07:16   15   AT THE TIME, YOU DIDN'T WANT EVERYBODY TO JUST DIRECTLY

02:07:20   16   COPY IT. ON THE OTHER HAND, IT WOULD REINFORCE OUR MARKET

02:07:22   17   LEADERSHIP, BECAUSE CISCO WAS FUNDAMENTALLY THE AUTHOR OF THE

02:07:26   18   CLI.

02:07:26   19   AND THE FACT THAT OTHER PEOPLE WERE USING IT, ALLOWED

02:07:30   20   CISCO TO PRESENT ITSELF AS THE DE FACTO LEADER IN THE INDUSTRY

02:07:35   21   AND SAY, LOOK, EVERYBODY ELSE IS USING THE SAME CLI, THEREFORE

02:07:41   22   WE'RE THE LEADER.

02:07:42   23   SO IT SORT OF REINFORCED OUR MARKET LEADERSHIP POSITION

02:07:45   24   BECAUSE OTHERS WERE USING THE SAME LANGUAGE TO CONTROL THE

02:07:48   25   DEVICES.

02:07:48 1   Q.   WERE THERE BENEFITS TO CISCO WITH CUSTOMERS OF PRESENTING

02:07:53 2   CISCO'S CLI AS AN INDUSTRY STANDARD OR DE FACTO STANDARD?

02:07:58 3   A.   WELL, CERTAINLY, CISCO HAD A FAIRLY EXTENSIVE TRAINING

02:08:02 4   PROGRAM FOR OUR CUSTOMERS CALLED THE CCIE, CISCO CERTIFIED

02:08:06 5   INTERNET WORKING ENGINEER.

02:08:07 6   AND CCIE ENGINEERS WERE TRAINED IN THE CISCO CLI, AMONGST

02:08:13 7   OTHER THINGS, ON HOW TO BUILD AND EXPAND NETWORKS.

02:08:16 8   AND THOSE PEOPLE GOT THE LITTLE CERTIFICATES, AND THEY PUT

02:08:19 9   IT ON THEIR BUSINESS CARDS, AND THEY GOT PAID MORE FROM

02:08:23 10   CUSTOMERS.

02:08:23 11   SO THE CISCO WAY OF BUILDING THE NETWORK AND THE CISCO CLI

02:08:27 12   IS PART OF THAT, WAS AN ADVANTAGE TO BOTH CISCO AND OUR

02:08:30 13   CUSTOMERS, AND IT REINFORCED AGAIN, THE COMPETITIVE POSITION OF

02:08:36 14   CISCO IN THE MARKET.

02:08:37 15   Q.   WOULD YOU OPEN YOUR BINDER TO TX 5134, PLEASE, MR. VOLPI.

02:08:42 16   A.   WHICH BINDER?

02:08:45 17   Q.   THE ONE ON THE RIGHT THERE, THE NOTEBOOK.

02:08:47 18   A.   WHICH NUMBER AGAIN?

02:08:49 19   Q.   5134.

02:08:51 20   AND TELL ME, TAKE A LOOK AT IT, THE FIRST PAGE IS JUST A

02:08:55 21   COVER SHEET, BUT FLIP THROUGH AND TELL ME WHETHER THIS IS THE

02:09:00 22   KIND OF DOCUMENT PRODUCT REVIEW, STRATEGY REVIEW THAT YOU

02:09:05 23   TYPICALLY SAW AT CISCO?

02:09:08 24   A.   YOU ARE GOING TO HAVE TO PARDON MY INCOMPETENCE AT FINDING

02:09:11 25   THE PAGE NUMBER.

02:09:12 1   Q.   OH, I'M SORRY. ISN'T THERE A TAB THAT SAYS 5134?

02:09:23 2   A.   OH, YES, I HAVE IT HERE. COULD YOU REPEAT THE QUESTION,

02:09:26 3   PLEASE?

02:09:26 4   Q.   SURE. I CAN.

02:09:27 5   I WOULD LIKE YOU TO LOOK THROUGH THE FIRST TWO OR

02:09:30 6   THREE PAGES AND TELL ME WHETHER THIS IS THE KIND OF PRODUCT OR

02:09:33 7   STRATEGY REVIEW THAT YOU WERE ACCUSTOMED TO SEEING AT CISCO?

02:09:36 8   A.   YES, THIS WOULD BE.

02:09:51 9   MR. VAN NEST: I WOULD MOVE 5134 IN EVIDENCE,

02:09:54 10   YOUR HONOR.

02:09:54 11   THE COURT: ANY OBJECTION?

02:09:56 12   MR. NELSON: NO OBJECTION, YOUR HONOR.

02:09:58 13   THE COURT: OKAY. IT WILL BE ADMITTED.

02:09:59 14   (DEFENDANT'S EXHIBIT 5134 WAS ADMITTED INTO EVIDENCE.)

02:09:59 15   BY MR. VAN NEST:

02:10:00 16   Q.   BEFORE WE GET INTO THE DETAIL, WHAT DOES THIS APPEAR TO

02:10:03 17   REFLECT, MR. VOLPI?

02:10:04 18   A.   IT SEEMS TO DISCUSS A PARTICULAR USE CASE OF SOME

02:10:13 19   COMMAND-LINE INTERFACE OF HOW YOU COULD CONFIGURE A ROUTER AND

02:10:17 20   DO SOME DEMONSTRATIONS AROUND THAT FOR CUSTOMERS.

02:10:19 21   Q.   OKAY. AND COULD WE PUT UP PAGE 3, WHICH IS A DIAGRAM, AND

02:10:24 22   BLOW IT UP, PLEASE.

02:10:25 23   NOW MR. VOLPI, I'VE GOT IT ON THE SCREEN SO YOU DON'T HAVE

02:10:29 24   TO FIND IT THERE. BUT IS THIS DEPICTING SOME KIND OF A ROAD

02:10:33 25   MAP?

02:10:34 1   A.   YEAH. IT ESSENTIALLY EXPLAINS, I BELIEVE, THE EVOLUTION

02:10:40 2   OF HOW THE IOS SOFTWARE, THAT'S KIND OF IN THE FIRST 1993

02:10:48 3   VERTICAL, WHICH IS THE CORE SOFTWARE THAT OPERATES THE ROUTERS

02:10:52 4   AND SWITCHES AT CISCO, SOME OF THE SWITCHES AT CISCO, DESCRIBED

02:10:56 5   HOW THAT LANGUAGE, A PARSER IS HOW IOS INTERPRETS THE

02:11:02 6   COMMAND-LINE INTERFACE. AND HOW THAT'S BECOMING, OR HOW,

02:11:07 7   ESSENTIALLY, THE CLI IS BECOMING AN INDUSTRY STANDARD WHERE

02:11:13 8   IT'S A COMMONLY ACCEPTED WAY IN WHICH USERS CAN ISSUE COMMANDS

02:11:20 9   TO DEVICES THAT USE THE SOFTWARE CALLED IOS.

02:11:23 10   Q.   NOW CAN YOU SEE THAT THE DATE ON THIS DOCUMENT IS 2005?

02:11:28 11   A.   YES.

02:11:29 12   Q.   OKAY. AND SO I WOULD LIKE TO HIGHLIGHT WHAT WE HAVE ON

02:11:33 13   THE SCREEN. IT SAYS, ACTUALLY SAYS, "CLI BECOMES INDUSTRY

02:11:39 14   STANDARD." INDICATING A PERIOD BETWEEN '93 AND 2000.

02:11:42 15   DO YOU SEE THAT?

02:11:43 16   A.   YES.

02:11:43 17   Q.   WAS THAT CONSISTENT WITH YOUR UNDERSTANDING ABOUT THE

02:11:46 18   CISCO CLI DURING THE PERIOD WHEN YOU WERE MANAGING LINE UNITS

02:11:53 19   THERE, THAT IT HAD BECOME AN INDUSTRY STANDARD?

02:11:57 20   A.   I STARTED MANAGING THE LINE UNITS AFTER 2001, SO THIS TIME

02:12:01 21   PERIOD IS NOT A PERIOD OF TIME IN WHICH I MANAGED LINE UNITS.

02:12:04 22   WHAT I INTERPRET FROM IT, WHEN I JOINED CISCO IN 1994, WE

02:12:07 23   WERE A GOOD COMPANY, BUT WE WERE ONE OF MANY COMPETITORS IN THE

02:12:12 24   SPACE. WE HAD LOTS OF -- LARGE AND SCARY COMPETITORS. AND BY

02:12:18 25   2000 WE HAD LARGELY OUT-COMPETED MOST OF THEM. AND WE HAD

02:12:22 1   GAINED MUCH HIGHER MARKET SHARE BY THEN.

02:12:25 2   THE RESULT OF THAT HIGH MARKET SHARE AND THE BROAD USE OF

02:12:29 3   CISCO PRODUCTS IS WHAT PRESUMABLY CREATED THIS NOTION THAT IT

02:12:33 4   BECAME AN INDUSTRY STANDARD.

02:12:34 5   Q.   DID YOU -- DO YOU RECALL HEARING PEOPLE ON OTHER OCCASIONS

02:12:39 6   DURING YOUR TENURE AS ONE OF THE MANAGERS AT CISCO, REFER TO

02:12:44 7   THE CLI AS INDUSTRY STANDARD, AS SHOWN IN THIS DOCUMENT?

02:12:47 8   A.   YEAH. I DON'T REMEMBER EXACT CONVERSATIONS, BUT IT WAS

02:12:51 9   COMMONLY UNDERSTOOD.

02:12:52 10   Q.   OKAY. WOULD YOU TAKE A LOOK AT 5457, AND THAT'S IN

02:13:00 11   EVIDENCE, SO COULD WE PUT THAT ON THE SCREEN.

02:13:05 12   ACTUALLY BEFORE WE LOOK AT IT, I WANT TO ASK A QUESTION OF

02:13:08 13   YOU, MR. VOLPI.

02:13:10 14   WHILE YOU WERE IN THE ETHERNET SWITCHING AND ROUTING UNITS

02:13:13 15   AT CISCO, DID CISCO ACTUALLY PROMOTE ITS CLI AS AN "INDUSTRY

02:13:18 16   STANDARD?"

02:13:19 17   A.   I BELIEVE THE LANGUAGE WAS USED FAIRLY BROADLY IN THE

02:13:23 18   DOCUMENTATION THAT WE HAVE.

02:13:24 19   Q.   AND BY DOCUMENTATION, DO YOU MEAN PUBLIC DOCUMENTATION?

02:13:28 20   A.   YEAH, DOCUMENTATION WE WOULD USE AT MARKETING EVENTS OR

02:13:31 21   PROVIDE THEM TO CUSTOMERS.

02:13:33 22   Q.   AND LET'S TAKE A LOOK NOW AT 5457, THAT'S ALREADY IN

02:13:36 23   EVIDENCE. AND I BELIEVE THERE'S A PAGE -- THIS IS A SOFTWARE

02:13:39 24   RELEASE. I BELIEVE SLIDE 96 WAS ONE WE HAVE LOOKED AT BEFORE.

02:13:45 25   I'M GOING TO BLOW THAT UP ON THE SCREEN, MR. VOLPI.

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02:13:49   1            THIS SAYS, "CISCO IOS CLI, CURRENT DE FACTO STANDARD;" DO

02:13:54   2       YOU SEE THAT?

02:13:55   3       A.   YES.

02:13:55   4       Q.   THEN THERE'S A PRO AND A CON.

02:13:58   5       A.   YES.

02:13:58   6       Q.   WAS THIS THE TYPE OF STATEMENT FREQUENTLY MADE TO THE

02:14:05   7       CUSTOMERS ABOUT THE CLI?

02:14:06   8       A.   YES, IT WAS FREQUENTLY MADE.

02:14:10   9            IN THIS PARTICULAR CASE, ESSENTIALLY, THERE WERE ALWAYS

02:14:15  10       DEBATES ON WHETHER CLI WAS THE RIGHT TECHNOLOGY FOR THE FUTURE

02:14:20  11       AT CISCO AND WHETHER MAYBE CISCO SHOULD CHANGE IT SOMEHOW AT

02:14:25  12       SOME POINT IN TIME.

02:14:27  13            WHAT THIS DOCUMENT ARGUES IS THAT PRO'S AND CON'S OF ITS

02:14:31  14       NATURE.  SO IT SAYS IT'S VERY POWERFUL AND COMPLETE, AND SO

02:14:35  15       FORTH, BUT IT'S NOT VERY GOOD FOR PROGRAM ACCESS AND A FEW

02:14:39  16       OTHER THINGS.  BUT IT WAS CLEAR IT WAS A WELL-ACCEPTED STANDARD

02:14:43  17       AT THAT POINT.

02:14:44  18       Q.   WOULD YOU OPEN UP YOUR BINDER TO TX 5451, PLEASE, AND TELL

02:14:51  19       ME WHETHER YOU RECOGNIZE THAT AS A FAIRLY TYPICAL MARKETING

02:14:54  20       DOCUMENT IN USE AT CISCO?

02:14:56  21       A.   YES, IT WAS.

02:14:57  22       Q.   OKAY.

02:14:58  23            MR. VAN NEST:  I WOULD OFFER 5451 IN EVIDENCE

02:15:00  24       YOUR HONOR.

02:15:00  25            THE COURT:  ANY OBJECTION.
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VOLPI DIRECT EXAM BY MR. VAN NEST

02:15:01   1   MR. NELSON: NO OBJECTION.

02:15:02   2   THE COURT: IT WILL BE ADMITTED.

02:15:11   3   (DEFENDANT'S EXHIBIT 5451 WAS ADMITTED INTO EVIDENCE.)

02:15:11   4   BY MR. VAN NEST:

02:15:12   5   Q.   AND RIGHT ON THE FIRST PAGE, THIS IS AT THE BOTTOM,

02:15:16   6   MR. VOLPI. AND AGAIN, I'VE GOT IT ON THE SCREEN, IF WE COULD

02:15:19   7   HIGHLIGHT THAT. "COST-EFFECTIVE ADMINISTRATION, MOST SMALL OR

02:15:27   8   AUTONOMOUS BRANCH OFFICES CANNOT JUSTIFY THE EXPENSE OF HIGH

02:15:31   9   LEVEL ON-SITE TECHNICAL EXPERTISE. BECAUSE OF THIS, CISCO

02:15:34   10   OFFERS CUSTOMERS THE OPTION OF USING THE INDUSTRY STANDARD

02:15:37   11   CISCO IOS SOFTWARE COMMAND-LINE INTERFACE."

02:15:39   12   WHAT DOES THAT REFER TO?

02:15:40   13   A.   I THINK VERY SIMILAR TO WHAT WE HAVE BEEN TALKING ABOUT.

02:15:44   14   THIS IS A MARKETING DOCUMENT THAT CISCO WOULD PROVIDE TO

02:15:49   15   CUSTOMERS. AND IT INDICATES THAT FOR CUSTOMERS THAT ARE LESS

02:15:55   16   SOPHISTICATED, LESS TECHNICAL, AND DON'T HAVE A LOT OF ON-SITE

02:16:00   17   EXPERTISE, MEANING PEOPLE THAT COULD WALK UP TO THE ROUTER AND

02:16:05   18   TOUCH IT AND CHANGE IT, THAT CISCO OFFERS ITS INDUSTRY

02:16:08   19   STANDARD, CISCO IOS SOFTWARE, COMMAND-LINE INTERFACE, WHICH IS

02:16:10   20   ESSENTIALLY THE WAY TO CONFIGURE THE ROUTER.

02:16:12   21   SO CISCO IS STATING THAT THE COMMAND-LINE INTERFACE IS AN

02:16:15   22   INDUSTRY STANDARD IN THIS DOCUMENT.

02:16:16   23   Q.   AND IN CONNECTION WITH THIS PARTICULAR PROMOTION, WHAT

02:16:19   24   WOULD BE THE BENEFIT TO CISCO OF PROMOTING THE CLI TO THESE

02:16:24   25   CUSTOMERS AS INDUSTRY STANDARD?

VOLPI DIRECT EXAM BY MR. VAN NEST

02:16:25   1   A.   WELL, PRESUMABLY THE CUSTOMERS, THEY DON'T HAVE A LOT OF

02:16:29   2   EXPERTISE ON THEIR OWN BECAUSE THESE ARE COMPLICATED THINGS.

02:16:32   3   SO THEY WOULD WANT TO HIRE A CONSULTANT OR AN ADVISOR OR

02:16:35   4   SOMEBODY THAT CAN HELP THEM TO CONFIGURE THE ROUTER.

02:16:39   5   AND WHAT THIS IS ESSENTIALLY SAYING IS THAT OUR ROUTER

02:16:41   6   SPEAKS THIS LANGUAGE CLI THAT EVERYBODY UNDERSTANDS. SO IT

02:16:47   7   SHOULD BE EASY FOR YOU TO FIND SOMEBODY THAT COULD CONFIGURE OR

02:16:50   8   MANAGE THE DEVICE.

02:16:51   9   Q.   WAS THAT A SELLING ADVANTAGE FOR CISCO?

02:16:52   10   A.   I MEAN, IT CLEARLY IS BECAUSE THAT WAY, YOU KNOW, EVEN A

02:16:56   11   SMALL BUSINESS CAN AFFORD TO BRING ON SOMEBODY TO MANAGE THEIR

02:16:58   12   NETWORK.

02:16:58   13   Q.   WOULD YOU OPEN UP YOUR BINDER TO TX 8237, PLEASE.

02:17:08   14   CAN YOU TELL ME WHETHER YOU RECOGNIZE THAT AS A SIMILAR

02:17:11   15   MARKETING -- SIMILAR PRODUCT MANUAL-TYPE DOCUMENT?

02:17:17   16   A.   YES, IT IS.

02:17:18   17   MR. VAN NEST: I WOULD OFFER 8237 IN EVIDENCE,

02:17:21   18   YOUR HONOR.

02:17:21   19   MR. NELSON: NO OBJECTION YOUR HONOR.

02:17:22   20   THE COURT: IT WILL BE ADMITTED.

02:17:24   21   (DEFENDANT'S EXHIBIT 8237 WAS ADMITTED INTO EVIDENCE.)

02:17:24   22   BY MR. VAN NEST:

02:17:25   23   Q.   IF WE COULD JUST PUT THE FRONT PAGE OF IT UP ON THE

02:17:28   24   SCREEN. WHAT IS 8237, MR. VOLPI?

02:17:30   25   A.   IT LOOKS LIKE A PIECE OF DOCUMENTATION THAT CISCO HAS

02:17:34 1   PRODUCED ON ANOTHER VARIANT OF THE IOS SOFTWARE CALLED IOS XR.

02:17:39 2   Q.   AND HOW WOULD A DOCUMENT LIKE THIS BE USED OR HOW WAS IT

02:17:43 3   USED DURING YOUR TENURE AT CISCO?

02:17:46 4   A.   MY GUESS IS THESE DOCUMENTS ARE HANDED OUT TO CUSTOMERS

02:17:53 5   FOR THEM TO BETTER UNDERSTAND HOW TO MANAGE, CONFIGURE, SUPPORT

02:17:59 6   THE PRODUCTS THAT CISCO SELLS TO THEM.

02:18:02 7   Q.   OKAY. AND THIS ONE HAS TO DO WITH, I GUESS A SUBSEQUENT

02:18:05 8   VERSION OF IOS, THIS IS THE IOS XR?

02:18:07 9   A.   YES, IT IS.

02:18:08 10   Q.   COULD WE GO TO THE SECOND PAGE AND BLOW UP THE

02:18:11 11   MANAGEABILITY SECTION IN THE INTRODUCTION.

02:18:18 12   AND THIS SAYS, MANAGEABILITY PROVIDES INDUSTRY STANDARD

02:18:23 13   MANAGEMENT INTERFACES, INCLUDING MODULAR COMMAND-LINE

02:18:27 14   INTERFACE, CLI, AND THEN IT GOES ON.

02:18:31 15   WHAT IS BEING REFERRED TO IN THAT FIRST PART OF THE

02:18:34 16   SENTENCE, "THE INDUSTRY STANDARD MANAGEMENT INTERFACES,

02:18:37 17   INCLUDING MODULAR COMMAND-LINE INTERFACE."

02:18:39 18   WHAT IS THAT REFERRING TO?

02:18:40 19   A.   RIGHT. SO IN THIS CASE THE DOCUMENT SAYS THIS SOFTWARE

02:18:43 20   CALLED IOS XR CAN BE MANAGED IN THREE WAYS.

02:18:47 21   THE COMMAND-LINE INTERFACE, ANOTHER LANGUAGE THAT'S OFTEN

02:18:50 22   USED CALLED SIMPLE NETWORK MANAGEMENT PROTOCOL, WHICH IS A

02:18:54 23   DIFFERENT WAY MANAGING THE DEVICE. OR XML, WHICH IS SORT OF A

02:18:59 24   MORE PROGRAMMABLE WAY.

02:19:00 25   SO THESE ARE BASICALLY THREE SEPARATE WAYS IN WHICH THESE

02:19:03 1   NETWORKING DEVICES CAN BE PROGRAMMED. AND IT SAYS THAT THE

02:19:05 2   INDUSTRY STANDARD MANAGEMENT INTERFACE, ONE OF THEM IS THE

02:19:08 3   COMMAND-LINE INTERFACE, SO UNDERLINING THE SAME BASIC POINT

02:19:13 4   WHICH IS THAT IS THE COMMONLY ACCEPTED INDUSTRY WAY OF MANAGING

02:19:17 5   THE NETWORKING DEVICE.

02:19:19 6   Q.   MR. VOLPI, WHY DID YOU LEAVE CISCO?

02:19:24 7   A.   I HAD WORKED THERE FOR, LIKE I SAID, 13 YEARS. YOU KNOW,

02:19:29 8   I JOINED THE COMPANY WITH 2000 EMPLOYEES AND IT HAD BECOME

02:19:33 9   60,000 EMPLOYEES. I PREFER SMALLER COMPANIES. AND SO I

02:19:37 10   DECIDED IT WAS MY TIME TO MOVE ON TO DO SOMETHING DIFFERENT.

02:19:40 11   Q.   AND DID YOU LEAVE CISCO ON GOOD TERMS?

02:19:43 12   A.   I WOULD LIKE TO THINK SO. I HAD LONG-TERM DISCUSSIONS

02:19:48 13   WITH MR. CHAMBERS AND OTHERS ABOUT MOVING ON. I GAVE AMPLE

02:19:52 14   NOTICE, AND I'VE TRIED TO MAINTAIN A GOOD RELATIONSHIP WITH

02:19:55 15   CISCO SINCE.

02:19:56 16   MR. VAN NEST: I HAVE NO FURTHER QUESTIONS,

02:19:57 17   YOUR HONOR.

02:19:58 18   THE COURT: THANK YOU.

02:19:58 19   MR. NELSON, CROSS-EXAMINATION?

02:20:00 20   MR. NELSON: THANK YOU, YOUR HONOR.

02:20:05 21   I THINK YOU HAVE A COPY OF YOUR DEPOSITION TRANSCRIPT

02:20:07 22   ALREADY.

02:20:09 23   OKAY. I DON'T THINK I NEED ANYTHING ELSE THEN,

02:20:13 24   YOUR HONOR.

02:20:15 25   MR. VAN NEST: EXCUSE ME, YOUR HONOR, I FORGOT TO

02:20:18 1   MOVE 5457 IN EVIDENCE. THAT'S ONE OF THE DOCUMENTS WE

02:20:23 2   DISCUSSED.

02:20:26 3   THE COURT: ANY OBJECTION, MR. NELSON?

02:20:27 4   MR. NELSON: NO OBJECTION.

02:20:28 5   THE COURT: IT WILL BE ADMITTED.

02:20:30 6   (DEFENDANT'S EXHIBIT 5457 WAS ADMITTED INTO EVIDENCE.)

02:20:30 7   MR. VAN NEST: THANK YOU.

02:20:56 8   **CROSS-EXAMINATION**

02:20:57 9   BY MR. NELSON:

02:20:57 10   Q.   ALL RIGHT. GOOD AFTERNOON, SIR.

02:20:59 11   A.   GOOD AFTERNOON.

02:21:00 12   Q.   I JUST HAVE A FEW QUESTIONS FOR YOU, JUST TO FOLLOW UP ON

02:21:03 13   SOME THINGS THAT COUNSEL ASKED.

02:21:04 14   SO YOU DON'T RECALL ANY STATEMENT OR COMMUNICATION THAT

02:21:08 15   YOU MADE TO ANY COMPETITOR SAYING IT WAS OKAY FOR THEM TO USE

02:21:12 16   CISCO CLI; RIGHT.

02:21:13 17   A.   NO, I DO NOT RECALL.

02:21:15 18   Q.   AND SIMILARLY, YOU DON'T RECALL ANY STATEMENT THAT ANYBODY

02:21:18 19   ELSE AT CISCO MADE TO A COMPETITOR SAYING IT WAS OKAY TO USE

02:21:22 20   THE CISCO CLI; RIGHT?

02:21:23 21   A.   THAT'S CORRECT.

02:21:24 22   Q.   AND YOU DON'T RECALL ANY PUBLIC STATEMENT THAT CISCO EVER

02:21:29 23   MADE SAYING IT WAS OKAY TO IT USE THE CISCO CLI; RIGHT?

02:21:32 24   A.   I DO NOT RECALL SUCH A STATEMENT.

02:21:39 25   Q.   NOW I WANT TO TALK ABOUT THE COMPETITORS YOU MENTIONED. I

02:21:42 1   THINK YOU TALKED ABOUT FOUNDRY AND EXTREME AND YOU MENTIONED

02:21:44 2   3COM I THINK; RIGHT?

02:21:45 3   AND I BELIEVE DURING YOUR DEPOSITION YOU SAID FORCE10 TOO,

02:21:49 4   IS THAT ANOTHER ONE AT THE TIME?

02:21:50 5   A.   YES.

02:21:51 6   Q.   SO I JUST WANT TO PICK UP THERE A LITTLE BIT.

02:21:54 7   LET ME START WITH FOUNDRY.

02:21:57 8   SO YOU NEVER, YOURSELF, DID A COMPARISON OF WHAT FOUNDRY'S

02:22:02 9   CLI WAS TO CISCO'S CLI; RIGHT?

02:22:04 10   A.   I DID NOT.

02:22:05 11   Q.   SO YOU DON'T HAVE ANY IDEA HOW MANY OF THE COMMANDS THAT

02:22:08 12   FOUNDRY WAS USING AS COMPARED TO CISCO CLI; RIGHT?

02:22:11 13   A.   PERSONALLY, I DO NOT KNOW.

02:22:14 14   Q.   RIGHT.

02:22:15 15   AND YOU DON'T HAVE ANY IDEA OF HOW MANY OF THE SCREEN

02:22:17 16   OUTPUTS THAT FOUNDRY WAS USING AS OPPOSED TO CISCO'S CLI;

02:22:20 17   RIGHT?

02:22:20 18   A.   NO, I RELIED ON OTHER PEOPLE'S COMMUNICATIONS TO ME AROUND

02:22:27 19   THAT SUBJECT.

02:22:29 20   Q.   RIGHT.

02:22:30 21   AND YOU DON'T RECALL ANYBODY EVER SHOWING YOU OR SHARING

02:22:35 22   WITH YOU A COMPARISON OF FOUNDRY'S CLI TO CISCO'S CLI; RIGHT?

02:22:39 23   A.   NO, I DON'T RECALL.

02:22:40 24   Q.   OKAY.

02:22:41 25   AND IN FACT, IF WE GO TO EXTREME, SAME QUESTION, YOU NEVER

02:22:47 1   MADE A COMPARISON OF WHAT EXTREME WAS DOING TO WHAT CISCO WAS

02:22:51 2   DOING; RIGHT?

02:22:51 3   A.   NO, I DID NOT.

02:22:52 4   Q.   AND YOU DON'T ACTUALLY EVER RECALL ANYBODY BRINGING YOU A

02:22:56 5   COMPARISON AND SAYING, HEY, HERE'S WHAT EXTREME IS DOING VERSUS

02:23:03 6   WHAT CISCO IS DOING; RIGHT?

02:23:04 7   A.   I DON'T RECALL SPECIFICALLY.

02:23:05 8   Q.   AND THEN FORCE10, I THINK THAT WAS THE OTHER COMPETITOR?

02:23:07 9   A.   THAT'S RIGHT. I DON'T RECALL EITHER.

02:23:09 10   Q.   NO COMPARISON? YOU DON'T RECALL ANY COMPARISON AT ALL

02:23:13 11   THAT WAS EVER MADE?

02:23:14 12   A.   YOU KNOW, IN FAIRNESS, IT WAS A LONG TIME AGO. I DON'T

02:23:18 13   REALLY RECALL SPECIFICS AT ALL.

02:23:19 14   Q.   NOW I JUST WANT TO TALK TO YOU A LITTLE BIT -- AND SO YOU

02:23:23 15   DON'T RECALL ANY STATEMENTS BY CISCO WHILE YOU WERE THERE

02:23:27 16   SAYING HEY, YOU CAN USE -- YOU CAN FREELY USE OUR CLI; RIGHT?

02:23:30 17   A.   NO, I DON'T RECALL SUCH STATEMENTS.

02:23:32 18   Q.   NOW I WANT TO GO TO EXHIBIT 5134 FOR A MOMENT. THAT WAS

02:23:39 19   SOMETHING THAT COUNSEL LOOKED AT WITH YOU.

02:23:44 20   A.   YES.

02:23:45 21   Q.   SO 5134, THAT WAS A PRESENTATION YOU LOOKED AT. THERE'S

02:23:49 22   ANOTHER PAGE IN THERE I WANT TO DISCUSS WITH YOU, PAGE 7, IF WE

02:23:55 23   COULD.

02:24:01 24   SO ONE OF THE THINGS IT SAYS ON THIS PAGE 7 IS "UPGRADES

02:24:07 25   IOS CLI TECHNOLOGY."

02:24:08	1	DO YOU SEE THAT?
02:24:09	2	A. YES.
02:24:09	3	Q. AND THEN THERE'S A BULLET THAT SAYS WHY?
02:24:13	4	A. YES.
02:24:13	5	Q. IF WE GO DOWN TO THE THIRD ONE THERE, IT SAYS,
02:24:20	6	"COMPETITORS, LIKE JUNIPER, HAVE RAISED THE BAR."
02:24:23	7	DO YOU SEE THAT?
02:24:24	8	A. YES.
02:24:25	9	Q. SO JUNIPER, THEY HAD A DIFFERENT KIND OF CLI; RIGHT?
02:24:28	10	A. YES. WELL, JUNIPER HAD MULTIPLE CLI'S.
02:24:32	11	Q. RIGHT. AND JUNOS, YOU REMEMBER THAT ONE?
02:24:34	12	A. I DON'T RECALL EVERYTHING JUNOS, BUT THE ORIGINAL ONE I
02:24:38	13	THINK YOU ARE REFERRING TO, I RECALL.
02:24:39	14	Q. AND THAT JUNOS WAS DIFFERENT THAN CISCO CLI?
02:24:42	15	A. AS FAR AS I KNOW, IT WAS SOMEWHAT DIFFERENT, YES.
02:24:45	16	Q. OKAY. SO HERE IT'S SAYING THE COMPETITORS HAVE RAISED THE
02:24:50	17	BAR. SO COMPETITORS, IN THIS CASE JUNIPER, RAISED THE BAR WITH
02:24:53	18	RESPECT TO CLI DESIGN; RIGHT?
02:24:55	19	A. I BELIEVE THAT'S WHAT THIS SLIDE SAYS, YES.
02:24:57	20	Q. RIGHT. AND THAT'S GOOD; RIGHT? IN THE INDUSTRY, IT'S
02:25:00	21	GOOD TO HAVE PEOPLE OUT THERE, COMPETITORS OUT THERE RAISING
02:25:03	22	THE BAR; RIGHT?
02:25:04	23	A. PROBABLY, YES.
02:25:05	24	Q. YEAH. YOU DON'T JUST WANT PEOPLE OUT THERE COPYING AND
02:25:09	25	HAVE NO INNOVATION AND THE INDUSTRY IS STUCK WITH THE SAME OLD

02:25:13 1   STUFF?

02:25:13 2   A.   WELL, I SUPPOSE IT DEPENDS ON YOUR PERSPECTIVE, YOU WOULD

02:25:15 3   RATHER ALWAYS BE THE LEADER.

02:25:17 4   Q.   UNDERSTOOD. BUT THAT'S GOOD FOR THE INDUSTRY; RIGHT?

02:25:19 5   A.   I BELIEVE SO.

02:25:20 6   MR. NELSON: OKAY. THANK YOU, SIR.

02:25:21 7   I DON'T HAVE ANY FURTHER QUESTIONS.

02:25:23 8   THE COURT: ANYTHING ELSE FOR THIS WITNESS?

02:25:25 9   MR. VAN NEST: JUST ONE OR TWO, YOUR HONOR.

02:25:26 10   THE COURT: SURE.

02:25:27 11   **REDIRECT EXAMINATION**

02:25:28 12   BY MR. VAN NEST:

02:25:29 13   Q.   MR. VOLPI, YOU MENTIONED THAT JUNIPER HAD SEVERAL

02:25:33 14   DIFFERENT OPERATING SYSTEMS?

02:25:34 15   A.   YES.

02:25:34 16   Q.   AND IS THAT BECAUSE THEY HAD SYSTEMS FOR DIFFERENT

02:25:39 17   MARKETS?

02:25:39 18   A.   IT'S BECAUSE THEY ACQUIRED COMPANIES AND MADE THEM PART OF

02:25:44 19   JUNIPER. AND SOME OF THE COMPANIES THAT THEY ACQUIRED HAD A

02:25:48 20   DIFFERENT CLI THAN THE ORIGINAL JUNIPER ONE.

02:25:51 21   Q.   I SEE. SO SOME OF THE JUNIPER CLI SYSTEMS WERE MORE

02:25:55 22   DIFFERENT FROM CISCO'S THAN OTHERS?

02:25:56 23   A.   MY RECOLLECTION, AND AGAIN IT'S DATED, BUT MY RECOLLECTION

02:26:00 24   IS THAT THE ORIGINAL JUNIPER, THE JUNOS THAT WAS MENTIONED A

02:26:04 25   FEW MINUTES AGO, WAS SOMEWHAT DIFFERENT, WHEREAS THE

02:26:08 1   ENTERPRISE-ORIENTED ONE, WHICH THEY ACQUIRED THROUGH A COMPANY

02:26:11 2   CALLED NETSCREEN THAT THEY ACQUISITION WITH, WAS MUCH MORE

02:26:16 3   SIMILAR TO CISCO'S IOS, IF I REMEMBER CORRECTLY.

02:26:20 4   Q.   SO IT WAS ANOTHER IN THAT CATEGORY OF CLI THAT WAS EITHER

02:26:24 5   SIMILAR OR VERY SIMILAR TO CISCO'S?

02:26:25 6   A.   THAT'S MY RECOLLECTION.

02:26:26 7   MR. VAN NEST: THANK YOU, MR. VOLPI.

02:26:28 8   I HAVE NOTHING FURTHER, YOUR HONOR.

02:26:30 9   THE COURT: MR. NELSON, ANY FURTHER FOLLOWUP?

02:26:32 10   MR. NELSON: NO, YOUR HONOR.

02:26:32 11   THE COURT: MAY MR. VOLPI BE EXCUSED?

02:26:35 12   MR. NELSON: YES, YOUR HONOR.

02:26:36 13   THE COURT: MR. VOLPI, THANK YOU FOR YOUR TESTIMONY.

02:26:40 14   ALL RIGHT.   MR. VAN NEST, YOUR NEXT WITNESS.

02:26:43 15   MR. VAN NEST: WE HAD A REQUEST FROM CISCO TO

02:26:45 16   INTERRUPT OUR PRESENTATION SO THAT THEY COULD PRESENT A WITNESS

02:26:49 17   WHO WASN'T AVAILABLE DURING THEIR CASE.

02:26:49 18   THE COURT: OH, OF COURSE.

02:26:50 19   MR. VAN NEST: AND SO I WILL CONCEDE THE FLOOR TO

02:26:56 20   MR. PAK.   THIS WITNESS IS BEING CALLED BY CISCO RATHER THAN

02:26:59 21   ARISTA.

02:26:59 22   THE COURT: LADIES AND GENTLEMEN, SOMETIMES BECAUSE

02:27:01 23   WE TRY TO BE COURTEOUS TO WITNESSES WHO NEED TO TRAVEL, THEY

02:27:04 24   GET A LITTLE OUT OF ORDER.

02:27:05 25   BUT THIS IS NOW MR. PAK IS GOING TO PUT THIS WITNESS ON.

02:27:09 1   IT'S PART OF THE PLAINTIFF'S CASE. YOU CONSIDER ALL THE

02:27:11 2   EVIDENCE REGARDLESS OF WHO IT COMES FROM, BUT THAT'S WHAT WE

02:27:13 3   ARE DOING HERE.

02:27:15 4   MR. PAK: I WOULD LIKE TO THANK MR. VAN NEST FOR THE

02:27:18 5   ACCOMMODATION.

02:27:19 6   AND I BELIEVE THAT WE HAVE MR. SHAFER IN THE ROOM.

02:27:23 7   THE COURT: GOOD.

02:27:24 8   MR. SHAFER, IF YOU WOULD COME FORWARD TO THE WITNESS

02:27:27 9   STAND, PLEASE, AND STAND TO BE SWORN.

02:27:33 10   (**PLAINTIFF'S WITNESS, PHILLIP SHAFER, WAS SWORN.)**

02:27:36 11   THE WITNESS: YES.

02:27:43 12   THE CLERK: THANK YOU, SIR. PLEASE BE SEATED.

02:27:47 13   MR. PAK: YOUR HONOR, MAY I APPROACH THE WITNESS?

02:27:50 14   THE COURT: YES.

02:27:53 15   THE CLERK: IF YOU WOULD SIR, PLEASE STATE YOUR NAME

02:27:55 16   AND SPELL YOUR LAST NAME FOR THE RECORD.

02:27:56 17   THE WITNESS: MY NAME IS PHILLIP SHAFER. SHAFER IS

02:28:01 18   S-H-A-F-E-R.

02:28:01 19   **DIRECT EXAMINATION**

02:28:01 20   BY MR. PAK:

02:28:02 21   Q. GOOD AFTERNOON, MR. SHAFER.

02:28:04 22   A. GOOD AFTERNOON.

02:28:04 23   Q. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD AGAIN.

02:28:07 24   A. PHILLIP SHAFER.

02:28:08 25   Q. OKAY. GREAT.

02:28:09 1   AND WHO IS YOUR CURRENT EMPLOYER?

02:28:11 2   A.   JUNIPER NETWORKS.

02:28:12 3   Q.   ALL RIGHT. AND WHAT IS YOUR JOB TITLE AT JUNIPER

02:28:16 4   NETWORKS?

02:28:16 5   A.   I AM A DISTINGUISHED ENGINEER.

02:28:18 6   Q.   AND WHAT DOES IT MEAN TO BE A DISTINGUISHED ENGINEER AT

02:28:21 7   JUNIPER?

02:28:22 8   A.   IT'S A SENIOR SOFTWARE DEVELOPER TITLE.

02:28:25 9   Q.   AND CAN YOU EXPLAIN YOUR RESPONSIBILITIES AS A

02:28:29 10   DISTINGUISHED ENGINEER AT JUNIPER NETWORKS?

02:28:31 11   A.   I'M THE CHIEF SOFTWARE ARCHITECTURE AND SOFTWARE DEVELOPER

02:28:36 12   FOR THE JUNOS CLI, USER INTERFACE, AND API.

02:28:41 13   Q.   OKAY. SO WE'VE HEARD ABOUT JUNO-S, THAT'S JUNOS,

02:28:45 14   SOMETIMES WE CALL THAT?

02:28:46 15   A.   YES.

02:28:46 16   Q.   AND CLI, DOES THAT STAND FOR COMMAND-LINE INTERFACE AT

02:28:50 17   JUNIPER AS WELL?

02:28:50 18   A.   YES, SIR.

02:28:51 19   Q.   OKAY. AND YOU SAID THAT YOU WERE A SOFTWARE ARCHITECT FOR

02:28:56 20   THE JUNOS CLI. CAN YOU BRIEFLY DESCRIBE FOR THE JURY WHAT YOUR

02:28:59 21   RESPONSIBILITIES ARE IN THAT CAPACITY?

02:29:01 22   A.   I DESIGNED, IMPLEMENTED, IMPROVED AND DEBUG THE CLI

02:29:10 23   INFRASTRUCTURE AND ALL THE RELATED BITS OF THE SOFTWARE THAT

02:29:14 24   ARE RELATED TO IT.

02:29:15 25   Q.   AND HOW LONG HAVE YOU BEEN EMPLOYED AT JUNIPER NETWORKS?

02:29:18 1   A.   JUST PAST MY 19TH YEAR.

02:29:21 2   Q.   OKAY. CONGRATULATIONS. YOU MUST HAVE JOINED IN FALL OF

02:29:25 3   1997.

02:29:27 4   A.   NOVEMBER OF '97, YES.

02:29:29 5   Q.   AND I THINK WE HEARD ABOUT JUNIPER FROM TIME TO TIME IN

02:29:32 6   THIS TRIAL, BUT CAN YOU PLEASE EXPLAIN TO THE LADIES AND

02:29:36 7   GENTLEMEN OF THE JURY WHAT JUNIPER NETWORKS DOES AS A COMPANY?

02:29:39 8   A.   SO JUNIPER NETWORKS MANUFACTURES AND SELLS DEVICES THAT DO

02:29:47 9   ROUTING OF INTERNET PACKETS, ALSO DO SECURITY, WE DO THE

02:29:51 10   HARDWARE AND THE SOFTWARE THAT RUNS ON THAT HARDWARE.

02:29:53 11   Q.   DO YOU MAKE ROUTERS?

02:29:55 12   A.   YES.

02:29:55 13   Q.   DO YOU MAKE SWITCHES?

02:29:59 14   A.   YES.

02:30:00 15   Q.   AND DO THOSE ROUTERS AND SWITCHES RUN THE CLI THAT WE HAVE

02:30:03 16   BEEN DISCUSSING?

02:30:04 17   A.   YES.

02:30:04 18   Q.   AND JUST TO GIVE US A SENSE OF THE SIZE OF JUNIPER

02:30:07 19   NETWORKS, HOW BIG IS THE COMPANY IN TERMS OF NUMBER OF

02:30:11 20   EMPLOYEES?

02:30:11 21   A.   6 OR 7000 EMPLOYEES.

02:30:14 22   Q.   AND DO YOU HAVE A ROUGH SENSE OF HOW BIG THE COMPANY IS,

02:30:19 23   IN TERMS OF REVENUES, PER YEAR?

02:30:21 24   A.   I THINK WE MAKE ABOUT A BILLION DOLLARS A QUARTER.

02:30:24 25   Q.   SO IT'S ABOUT $4 BILLION WHEN YOU ADD IT UP IN A YEAR?

02:30:28   1   A.   YEAH, 4, 4 1/2, SOMEWHERE AROUND THERE.

02:30:34   2   Q.   AND DOES JUNIPER ALSO COMPETE WITH ARISTA NETWORKS?

02:30:40   3   A.   YES.

02:30:41   4   Q.   AND YOU ARE HERE PURSUANT TO A TRIAL SUBPOENA; IS THAT

02:30:45   5   CORRECT?

02:30:45   6   A.   YES, I BELIEVE SO.

02:30:47   7   Q.   ARE YOU FAMILIAR WITH -- SPECIFICALLY, HOW ARE YOU

02:30:50   8   FAMILIAR WITH THE COMMAND-LINE INTERFACE FOR JUNOS?

02:30:52   9   I THINK YOU MENTIONED THAT YOU WORKED ON IT, BUT WERE YOU

02:30:54   10   ONE OF THE CREATORS OF THAT?

02:30:55   11   A.   I WAS THE DESIGNER OF THE ORIGINAL DEVELOPER. IT'S MY

02:31:02   12   STUFF, IT'S MY SOFTWARE.

02:31:03   13   Q.   AND WHEN DID YOU BEGIN WORK ON DEVELOPING THE CLI

02:31:07   14   INTERFACE FOR JUNOS?

02:31:09   15   A.   THAT WAS MY INITIAL JOB AT JUNIPER, THE PROJECT THAT I HAD

02:31:14   16   BEEN WORKING ON FOR 19 YEARS.

02:31:15   17   Q.   SO WHEN YOU JOINED IN 1997 THAT WAS THE PROJECT YOU WORKED

02:31:19   18   ON THEN, AND YOU CONTINUE TO WORK ON THE JUNOS CLI TODAY?

02:31:22   19   A.   YES, SIR.

02:31:22   20   Q.   OKAY.

02:31:25   21   AND WITH RESPECT TO HOW USERS INTERACT WITH THE JUNOS

02:31:32   22   COMMAND-LINE INTERFACE, CAN YOU DESCRIBE JUST THE INTERACTION

02:31:34   23   FOR USERS, AT A HIGH LEVEL?

02:31:37   24   A.   INTERACTION FOR A TYPICAL USER IS THROUGH A COMMAND-LINE

02:31:43   25   INTERFACE WHERE YOU ARE TYPING COMMANDS AS INDIVIDUAL WORDS

02:31:47 1   INTO THE SOFTWARE THAT I'VE WRITTEN.

02:31:53 2   IT PARSES THAT COMMAND LINE, FIGURES OUT WHAT EXACTLY YOU

02:31:56 3   ARE TRYING TO DO, GOES AND PERFORMS THE OPERATION AND THEN

02:31:59 4   SENDS THE RESULTS BACK TO THE USER. AGAIN, IN A TERMINAL

02:32:03 5   WINDOW.

02:32:03 6   Q.   AND ARE YOU FAMILIAR WITH THE CONCEPT OF HAVING A COMMAND

02:32:07 7   SYNTAX AS PART OF THE CLI?

02:32:09 8   A.   YES.

02:32:09 9   Q.   AND I TAKE IT THAT YOU DESIGNED THE COMMAND SYNTAX FOR THE

02:32:13 10   JUNOS CLI?

02:32:14 11   A.   YES, I DID.

02:32:15 12   Q.   SO THAT WOULD BE THE STRING OF WORDS THAT MAKE UP THE

02:32:19 13   MULTIWORD COMMANDS?

02:32:20 14   A.   YES, AS WELL AS THE SYNTAX FOR THE CONFIGURATION TIMES AND

02:32:25 15   THE SYNTAX FOR THE API.

02:32:27 16   Q.   AND YOU ALSO TALKED ABOUT OUTPUTS.

02:32:31 17   DOES JUNOS CLI ALSO PROVIDE SCREEN OUTPUTS IN RESPONSE TO

02:32:35 18   EXECUTING CERTAIN COMMANDS?

02:32:37 19   A.   YES. THE CLI DOES NOT ONLY THE COMMUNICATION OF THAT

02:32:44 20   OUTPUT, BUT ALSO THE RENDERING INTO TEXT FOR THE USER TO SEE.

02:32:51 21   Q.   SO THE SCREEN OUTPUTS THAT ARE GENERATED WHEN YOU EXECUTE

02:32:55 22   JUNIPER COMMANDS, WHO AUTHORED THOSE OUTPUTS AT JUNIPER?

02:33:00 23   A.   IN PART, IN ARCHITECTURE, IT WAS MY DESIGN. IN PART, SOME

02:33:06 24   OF THE COMMANDS ARE SOFTWARE THAT I'VE WRITTEN. THE REST OF IT

02:33:14 25   IS THE SOFTWARE THAT THE INDIVIDUAL SUBCOMPONENT AUTHOR HAS

02:33:18   1   WRITTEN THAT THEY USE MY ENGINE TO GENERATE TEXT FROM.

02:33:22   2   Q.   AND WHEN YOU SAY "SUBCOMPONENT AUTHORS," YOU ARE TALKING

02:33:25   3   ABOUT JUNIPER ENGINEERS WHO WORK ON DIFFERENT COMPONENTS?

02:33:28   4   A.   YEAH, THE -- IMAGINE THE SOFTWARE AS HAS A HIERARCHY OF

02:33:31   5   PIECES WHERE, YOU KNOW, THERE'S A TEAM THAT DOES THE ROUTING

02:33:36   6   PROTOCOL, AND UNDER THAT THERE'S A TEAM THAT DOES ANY

02:33:39   7   PARTICULAR ROUTING PROTOCOL, AND UNDER THAT THERE'S AN

02:33:42   8   INDIVIDUAL WHO IS RESPONSIBLE FOR ONE FACET OF THAT PROTOCOL.

02:33:45   9   Q.   AND GENERALLY SPEAKING, AT JUNIPER, WHO AUTHORS THE

02:33:49 10   COMMANDS AND THE SCREEN OUTPUTS AT JUNIPER NETWORKS?

02:33:52 11   A.   THE INDIVIDUAL COMPONENT OWNER DESCRIBES THEIR SYNTAX IN A

02:33:59 12   TOOL THAT I CREATED, AND THEN THAT PROVIDES CONSISTENCY AND

02:34:08 13   EASE OF OPERATION. BUT THE ACTUAL RESPONSIBLE PARTY IS THE

02:34:10 14   PARTICULAR DEVELOPER.

02:34:11 15   Q.   SO JUST TO MAKE IT CLEAR, SO THE TOOL OR THE FRAMEWORK,

02:34:14 16   YOU DESIGNED FOR THE CLI, BUT THE INDIVIDUAL ENGINEERS WHO WORK

02:34:18 17   ON THE COMMAND COMPONENTS, THEY WOULD BE THE ONES COMING UP

02:34:22 18   WITH THE COMMAND NAMES, SYNTAX, AND THE OUTPUTS AS WELL?

02:34:26 19   A.   YES, THAT'S CORRECT.

02:34:27 20   WE DO HAVE A STYLE GUIDE TO PUSH PEOPLE INTO BEHAVING IN A

02:34:32 21   CONSISTENT MANNER BETWEEN ALL THE COMPONENTS SO THAT IT LOOKS

02:34:43 22   LIKE A SINGLE PIECE OF SOFTWARE.

02:34:45 23   Q.   SO THERE'S A JUNIPER STYLE GUIDE FOR DESIGNING JUNIPER CLI

02:34:48 24   COMMANDS; IS THAT CORRECT?

02:34:49 25   A.   YES.

02:34:50 1   Q.   AND WHEN YOU CAME UP WITH -- WERE YOU INVOLVED IN THE

02:34:53 2   CREATION OF THAT JUNIPER STYLE GUIDE?

02:34:54 3   A.   YES, I WAS.

02:34:55 4   Q.   WHEN YOU WERE CREATING THE JUNIPER STYLE GUIDES, WAS IT

02:34:59 5   IMPORTANT FOR YOU TO REFLECT THE JUNIPER STYLE OF WRITING CLI

02:35:02 6   COMMANDS?

02:35:02 7   A.   YES.

02:35:03 8   Q.   AND WAS THAT IMPORTANT WITHIN JUNIPER TO HAVE CONSISTENCY

02:35:09 9   ACROSS JUNIPER PRODUCTS THROUGH THIS STYLE GUIDE AND OTHER WORK

02:35:13 10   THAT ENGINEERS DO AT JUNIPER NETWORKS?

02:35:16 11   A.   WELL, THE ORIGINAL GOAL WAS TO HAVE ONE JUNOS THAT RAN ON

02:35:20 12   ALL OF THE PLATFORMS. SO IT WASN'T JUST A MATTER OF

02:35:23 13   CONSISTENCY, IT WAS ONE SOFTWARE BASE.

02:35:24 14   Q.   SO IT'S CONSISTENT WITH PAST PRODUCTS, BUT ALSO HAVING

02:35:27 15   CONSISTENCY ACROSS MULTIPLE PRODUCTS WITHIN JUNIPER?

02:35:30 16   A.   YES, SIR.

02:35:30 17   Q.   OKAY. NOW DID YOU, IN WRITING THE JUNIPER STYLE GUIDE,

02:35:35 18   DID YOU TAKE SOMEBODY ELSE'S STYLE GUIDE AND COPY IT AS THE

02:35:40 19   BASIS FOR YOUR STYLE GUIDE?

02:35:41 20   A.   IT WAS, ESSENTIALLY, WORK DONE BETWEEN MYSELF AND THE LEAD

02:35:47 21   TECHNICAL WRITER AS TO WHAT WE WANTED THAT STYLE TO BE.

02:35:51 22   Q.   AND THAT PERSON WAS A JUNIPER EMPLOYEE, CORRECT?

02:35:54 23   A.   YES.

02:35:54 24   Q.   SO YOU DIDN'T GO OUT AND LOOK AT SOME OTHER COMPANY'S

02:35:57 25   STYLE GUIDE AND COPY IT INTO YOUR STYLE GUIDE?

02:35:59   1   A.   NO, WE DID NOT.

02:36:01   2   Q.   AND ONE MORE PIECE OF THE CLI INTERFACE.

02:36:03   3   ARE YOU FAMILIAR WITH HELP STRINGS?

02:36:05   4   A.   YES.

02:36:06   5   Q.   AND DOES JUNIPER JUNOS ALSO HAVE HELP STRINGS AS A

02:36:09   6   FEATURE?

02:36:10   7   A.   YES, WE DO.

02:36:11   8   Q.   AND WHO CREATES THE ACTUAL CONTENT THAT GOES INTO THE HELP

02:36:17   9   STRINGS WITHIN JUNIPER?

02:36:18 10   A.   AGAIN, IT'S THE INDIVIDUAL DEVELOPER, GUIDED BY THE JUNOS

02:36:25 11   STYLE.

02:36:26 12   Q.   NOW I WANT TO GO BACK IN TIME TO 1997, 1998 WHEN YOU FIRST

02:36:30 13   STARTED WORKING ON THE JUNOS CLI. WHEN YOU WERE WORKING ON

02:36:34 14   CREATING THE FIRST CLI FOR JUNIPER, WERE YOU AWARE THAT CISCO

02:36:38 15   ALREADY HAD PRODUCTS ON THE MARKET WITH THE CISCO CLI?

02:36:42 16   A.   YES, WE WERE.

02:36:43 17   Q.   AND HOW DID YOU KNOW THAT? HOW DID YOU KNOW ABOUT THE

02:36:46 18   CISCO CLI PRODUCTS?

02:36:47 19   A.   WE WERE AWARE THAT AS OUR PRODUCTS SHIPPED, THEY WOULD BE

02:36:51 20   OUR BIGGEST COMPETITOR.

02:36:54 21   Q.   AND WHEN YOU WERE CREATING THE JUNIPER CLI FOR JUNOS, DID

02:37:00 22   YOU LOOK AT THE COMMANDS AND THE SUBCOMMAND STRUCTURE AND

02:37:05 23   SYNTAX THAT WAS BEING USED BY CISCO FOR THE CISCO CLI USED IN

02:37:09 24   COMPETING PRODUCTS?

02:37:10 25   A.   NO, I INTENTIONALLY DID NOT LOOK AT COMPETING PRODUCTS.

02:37:13 1   Q.   SO CAN YOU SAY THAT ONE MORE TIME, SLOWLY, FOR THE JURY?

02:37:16 2   A.   NO, I DID NOT LOOK AT COMPETING PRODUCTS.

02:37:19 3   Q.   AND YOU DID NOT DO THAT INTENTIONALLY?

02:37:21 4   A.   INTENTIONALLY, YES.

02:37:23 5   Q.   AND WHY DID YOU DECIDE, AS THE CREATOR OF THE JUNIPER CLI,

02:37:27 6   TO CHOOSE NOT TO INTENTIONALLY LOOK AT A COMPETING CLI FROM

02:37:32 7   CISCO?

02:37:32 8   A.   THERE WERE THREE MAIN REASONS.

02:37:36 9   THE FIRST WAS WE DIDN'T WANT TO GIVE CISCO ANY GROUNDS TO

02:37:39 10   SUE US.

02:37:40 11   THE SECOND WAS THE -- BASED ON FEEDBACK FROM THE

02:37:51 12   CUSTOMERS, WE WANTED TO DO SOMETHING BETTER.

02:37:52 13   AND THE THIRD WAS, YOU KNOW, AS A NEW COMPANY HAVING THIS

02:37:56 14   INCREDIBLE GREEN FIELD EXPERIENCE OPPORTUNITY, I WANTED TO

02:37:59 15   WRITE SOMETHING COMPLETELY NEW, SOMETHING THAT I WANTED TO MAKE

02:38:02 16   AND USE. I DIDN'T WANT TO COPY SOMETHING.

02:38:05 17   Q.   OKAY. SO I WANT TO GO THROUGH EACH OF THOSE REASONS THAT

02:38:09 18   YOU JUST STATED ON THE RECORD.

02:38:10 19   SO FIRST OF ALL, WHEN YOU SAID GREEN FIELD PRODUCT OR THIS

02:38:13 20   WAS A BRAND-NEW OPPORTUNITY FOR YOU, WHAT DID YOU MEAN BY THAT?

02:38:17 21   AND CAN YOU EXPLAIN WHY THAT WAS AN INFLUENCE ON YOU IN

02:38:20 22   DECIDING TO CREATE THE JUNOS CLI?

02:38:22 23   A.   SO THE TERM "GREEN FIELD" COMES FROM AN OPEN PASTURE. YOU

02:38:26 24   CAN GO IN ANY DIRECTION, EVERYTHING IS WILD. YOU CAN MAKE IT

02:38:30 25   WHAT YOU WANT. THERE ARE NO CONSTRAINTS ON WHAT YOU ARE DOING.

02:38:34 1   I KIND OF HAD THAT OPPORTUNITY IN WHAT I COULD DO,

02:38:44 2   LITERALLY NOBODY COULD SAY THAT, DON'T DO THAT, I COULD DO

02:38:45 3   WHATEVER I WANTED.

02:38:46 4   Q.   THAT WAS BECAUSE YOU WERE AT JUNIPER AND THEY WERE WORKING

02:38:49 5   ON THEIR FIRST CLI?

02:38:50 6   A.   IT WAS A SMALL COMPANY AND WE HAD TECHNICAL REVIEW AND

02:38:53 7   STUFF LIKE THAT, BUT IT WAS REALLY AN OPPORTUNITY TO REIMAGINE

02:38:57 8   THE INTERACTION BETWEEN USERS AND DEVICES.

02:39:00 9   Q.   AND WAS THAT AN EXCITING OPPORTUNITY FOR YOU?

02:39:02 10 A.   YES, IT WAS.

02:39:02 11 Q.   AND THE SECOND REASON, I THINK YOU MENTIONED WAS SOMETHING

02:39:06 12 ABOUT CUSTOMERS, CUSTOMER FEEDBACK.

02:39:09 13   AND CAN YOU EXPLAIN A LITTLE BIT FURTHER ABOUT SOME OF THE

02:39:13 14 CUSTOMER FEEDBACK THAT YOU HAD BEEN HEARING ABOUT CISCO CLI AND

02:39:16 15 HOW THAT INFLUENCED YOUR DECISION TO COME UP WITH A DIFFERENT

02:39:19 16 USER INTERFACE FOR JUNIPER?

02:39:21 17 A.   SURE.

02:39:23 18   IF YOU -- SO IOS, EVEN AT THAT POINT IN '97, WAS FAIRLY

02:39:29 19 OLD. AND THE WAY IT APPROACHED CONFIGURATION OF THE COMMANDS

02:39:33 20 AND THE USER INTERACTION WAS FAIRLY DATED.

02:39:38 21   WE WANTED TO DO SOMETHING MORE MODERN, SOMETHING MORE

02:39:43 22 HIERARCHICAL, SOMETHING THAT WOULD HELP USERS IN THE DAY-TO-DAY

02:39:49 23 OPERATIONS THAT THEY USED OUR DEVICES FOR.

02:39:51 24 Q.   NOW THE OTHER THIRD REASON THAT YOU MENTIONED IS IN

02:39:55 25 LOOKING AT CISCO'S IOS CLI, YOU WERE CONCERNED THAT YOU DIDN'T

02:40:00 1   WANT TO GET SUED BY CISCO.

02:40:01 2   CAN YOU EXPLAIN FURTHER, FOR THE JURORS, WHAT THAT CONCERN

02:40:04 3   WAS ABOUT?

02:40:04 4   A.   SO BEFORE COMING TO JUNIPER I WAS EMPLOYED AS A CONTRACTOR

02:40:09 5   FOR IBM, AND IBM HAS A VERY, A VERY STRINGENT POLICY OF NOT

02:40:15 6   ALLOWING DEVELOPERS TO LOOK AT COMPETITORS'S PRODUCTS.

02:40:19 7   WE WOULD GET REPORTS AND CRITIQUES ON WHAT WAS AVAILABLE

02:40:24 8   IN THE MARKETPLACE, BUT WE DIDN'T ACTUALLY LOOK AT PRODUCTS.

02:40:27 9   IT WAS KIND OF A WALL TO KEEP US FROM ANY SUSPICION OR ANY

02:40:31 10   TAINT OF DERIVATIVE -- OF BEING CALLED A DERIVATIVE PRODUCT.

02:40:43 11   Q.   SO BY NOT LOOKING AT CISCO'S CLI AND USING CISCO'S CLI

02:40:48 12   COMMANDS, WERE YOU TRYING TO AVOID INFRINGING ANY OF CISCO'S

02:40:52 13   INTELLECTUAL PROPERTY RIGHTS?

02:40:53 14   A.   I WAS TRYING TO STAY CLEAR OF ANY ALLEGATION OF SUCH

02:41:02 15   BEHAVIOR.

02:41:03 16   Q.   OKAY. AND ARE YOU PROUD OF THE WORK THAT YOU'VE DONE WITH

02:41:06 17   YOUR JUNOS CLI?

02:41:07 18   A.   ABSOLUTELY.

02:41:08 19   Q.   AND HOW MANY, I KNOW IT'S HARD TO ESTIMATE, BUT HOW MANY

02:41:12 20   PRODUCTS WITHIN JUNIPER OVER THIS LONG PERIOD OF TIME HAVE RUN

02:41:17 21   SOME VERSION OF YOUR JUNIPER JUNOS CLI?

02:41:22 22   A.   I COULDN'T PUT A NUMBER ON IT, NORTH OF 18 OR 20.

02:41:29 23   Q.   OKAY. AND HAS JUNIPER BEEN ABLE TO EFFECTIVELY COMPETE

02:41:35 24   AGAINST CISCO IN VARIOUS MARKETS DURING YOUR TENURE THERE USING

02:41:41 25   A CLI THAT IS DIFFERENT FROM CISCO'S CLI?

02:41:43 1   A.   YES.

02:41:44 2   Q.   AND IN FACT, IN THE ROUTER MARKET, HOW WOULD YOU

02:41:48 3   CHARACTERIZE JUNIPER'S MARKET SHARE AS COMPARED TO CISCO'S?

02:41:51 4   A.   I BELIEVE WE ARE NUMBER TWO.

02:41:53 5   Q.   SO YOU WERE ABLE TO GAIN A NUMBER TWO MARKET SHARE IN THE

02:42:06 6   COMPETITIVE ROUTER MARKET COMPETING AGAINST CISCO BY USING A

02:42:10 7   USER INTERFACE THAT IS DIFFERENT THAN CISCO'S, IS THAT TRUE?

02:42:13 8   A.   YES, THAT IS TRUE.

02:42:15 9   Q.   AND I WOULD LIKE TO HAVE YOU TAKE A LOOK IN YOUR BINDER, I

02:42:21 10   BELIEVE THERE SHOULD BE A TRIAL EXHIBIT 4821.

02:42:31 11   I BELIEVE THIS HAS ALREADY BEEN ADMITTED INTO EVIDENCE?

02:42:34 12   MR. VAN NEST: IT HAS.

02:42:35 13   MR. PAK: SO I WOULD LIKE TO SHOW THAT ON THE SCREEN,

02:42:37 14   MR. FISHER.

02:42:39 15   Q.   MR. SHAFER, THESE ARE SOME OF THE COMMANDS THAT ARE AT

02:42:42 16   ISSUE IN THIS CASE THAT ARE CISCO COMMANDS.

02:42:44 17   CAN YOU -- I KNOW YOU HAVEN'T STUDIED THIS IN DETAIL, BUT

02:42:48 18   COULD YOU JUST FLIP THROUGH THIS COMMAND LIST AND LET THE JURY

02:42:51 19   KNOW WHETHER THIS LOOKS LIKE A LIST OF JUNIPER COMMANDS OR NOT.

02:42:59 20   DO THEY LOOK FAMILIAR YOU TO YOU AS JUNIPER COMMANDS?

02:43:02 21   A.   THESE ARE CERTAINLY NOT JUNIPER COMMANDS.

02:43:04 22   Q.   AND WHY DO YOU SAY THAT?

02:43:06 23   A.   THE STYLE BETWEEN IOS AND JUNOS IS VERY DIFFERENT IN TWO

02:43:12 24   PARTS.

02:43:12 25   ONE IS IOS REGARDS CONFIGURATION AS JUST A SERIES OF

02:43:18 1   COMMANDS. WHEREAS IN JUNOS, DATA IS MORE LIKE A DATABASE. YOU

02:43:23 2   EDIT IT, CHANGE IT, YOU COPY IT, YOU HAVE OPERATIONS YOU CAN

02:43:30 3   PERFORM ON DATA AS CONFIGURATION DATA. THEN THERE'S A SEPARATE

02:43:33 4   SET OF OPERATIONAL COMMANDS.

02:43:36 5   CISCO IOS MIXES THOSE TWO --

02:43:41 6   Q.   AND --

02:43:42 7   A.   -- IN WAYS THAT WE DO NOT.

02:43:43 8   Q.   YOU ALSO MENTIONED EARLIER THAT YOU BELIEVED THE JUNIPER

02:43:47 9   CLI IS MORE HIERARCHICAL THAN CISCO CLI.

02:43:50 10   COULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT?

02:43:52 11   A.   SO AN IOS COMMAND -- LET ME TRY IT THE OTHER WAY.

02:44:05 12   JUNOS COMMAND HAS A SERIES OF LAYERS AND YOU CAN EDIT INTO

02:44:10 13   THOSE LAYERS, LOOK AT THE PARTICULAR DATA UNDER A LAYER AND

02:44:13 14   SHOW IT.

02:44:13 15   IT'S SIMILAR TO FOLDERS AND DIRECTORIES ON A WINDOWS OR A

02:44:17 16   MAC. WHERE, IN IOS, EVERYTHING IS AT THE TOP LEVEL. JUNOS,

02:44:23 17   THERE IS THIS ORGANIZATION THAT ALLOWS YOU TO LOOK AT THE

02:44:26 18   CONFIGURATION FOR ANY PARTICULAR PROTOCOL SEPARATE FROM THE

02:44:29 19   REST OF THE BOX.

02:44:32 20   Q.   EVEN THOUGH YOU WERE USING SOME INDUSTRY COMMON WORDS AND

02:44:35 21   ACRONYMS, DID YOU FEEL COMPELLED TO USE CISCO'S SYNTAX AND

02:44:39 22   CISCO'S HIERARCHY WHEN COMING UP WITH JUNIPER'S CLI?

02:44:43 23   A.   WE ATTEMPTED TO USE THE COMMANDS AND TERMS THAT WERE MOST

02:44:49 24   APPROPRIATE FOR THE TASK AT HAND.

02:44:52 25   AT THE BOTTOM OF THE FIRST PAGE -- SO THERE IS SOME AMOUNT

02:45:02 1   OF OVERLAP, FOR EXAMPLE, I CAN'T FIND AN EXAMPLE WHERE -- "SHOW

02:45:11 2   ARP," THE "SHOW ARP" COMMAND ON PAGE 7 OF THIS DOCUMENT, IS THE

02:45:17 3   SAME FOR IOS AND JUNOS, SIMPLY BECAUSE YOU ARE SHOWING THE ARP.

02:45:23 4   SO THE OBVIOUS CHOICE IS "SHOW ARP."

02:45:25 5   WHEREAS TO SHOW THE ROUTING TABLE IN JUNOS, THE COMMAND IS

02:45:28 6   "SHOW ROUTE." IN IOS I THINK IT'S "SHOW IP ROUTE TABLE,"

02:45:33 7   SOMETHING.

02:45:34 8   SO WE'VE MADE -- WE'VE -- YOU KNOW, IN JUNOS WE TRY AND

02:45:38 9   MAKE THE OBVIOUS CHOICE THAT THE USER WOULD EXPECT.

02:45:42 10   Q.   AND WHAT WAS OBVIOUS TO YOU ACTUALLY TURNED OUT TO BE

02:45:44 11   CISCO'S CLI CHOICES IN MANY OCCASIONS; IS THAT CORRECT?

02:45:47 12   A.   THAT'S CORRECT.

02:45:47 13   Q.   I WANT TO TALK TO YOU ABOUT ANOTHER OPERATING SYSTEM

02:45:52 14   THAT'S BEEN DISCUSSED FROM JUNIPER CALLED JUNOS-E, I THINK IT'S

02:45:57 15   A LITTLE "E" AT THE END OF JUNOS; IS THAT CORRECT?

02:46:01 16   A.   I THOUGHT IT WAS A BIG "E".

02:46:02 17   Q.   OH, BIG E, I MAY BE WRONG.

02:46:04 18   SO ARE YOU FAMILIAR WITH THE JUNOS-E OPERATING SYSTEM AT A

02:46:08 19   HIGH LEVEL?

02:46:09 20   A.   VERY VAGUELY.

02:46:10 21   Q.   OKAY. AND IS -- DO YOU HAVE AN UNDERSTANDING OF WHETHER

02:46:16 22   JUNOS-E IS A PRODUCT THAT IS GOING TO BE SUPPORTED BY JUNIPER

02:46:20 23   GOING FORWARD?

02:46:20 24   A.   I BELIEVE IT'S END OF LIFE.

02:46:22 25   Q.   AND WHEN YOU SAY END OF LIFE, WHAT DO YOU MEAN BY THAT?

02:46:24 1   A.   THAT MEANS JUNIPER IS NO LONGER SHIPPING IT. WE SUPPORT

02:46:27 2   CUSTOMERS WHO USE IT IN THE FIELD, BUT WE DON'T ACTIVELY SELL

02:46:31 3   IT. OR, IN SOME SITUATIONS, WE GIVE A TERMINATION DATE FOR

02:46:38 4   WHEN WE WILL STOP SUPPORTING IT. BUT TYPICALLY, WE SUPPORT

02:46:45 5   FIELD CUSTOMER PRODUCTS BECAUSE WE SIMPLY BECAUSE WE LIKE OUR

02:46:45 6   CUSTOMERS.

02:46:48 7   Q.   AND WHAT ABOUT THE JUNOS CLI YOU DEVELOPED IN 1997, WHAT'S

02:46:52 8   JUNIPER'S PLAN WITH RESPECT TO THE USE OF THAT CLI?

02:46:56 9   A.   IT IS OUR FLAGSHIP PRODUCT AND WE CONTINUE TO DEVELOP IT

02:46:59 10   AND USE IT.

02:46:59 11   Q.   AND WOULD IT BE USED FOR ALL KINDS OF MARKETS IN WHICH

02:47:04 12   JUNIPER OFFERS PRODUCTS?

02:47:05 13   A.   YES.

02:47:05 14   MR. PAK: THANK YOU, YOUR HONOR.

02:47:06 15   I PASS THE WITNESS.

02:47:07 16   THE COURT: OKAY.

02:47:17 17   **CROSS-EXAMINATION**

02:47:18 18   BY MR. WONG:

02:47:18 19   Q.   GOOD MORNING SIR. WE HAVEN'T MET BEFORE.

02:47:20 20   MY NAME IS RYAN WONG AND I'M ONE OF THE ATTORNEYS FOR

02:47:24 21   ARISTA NETWORKS.

02:47:25 22   NOW CISCO'S COUNSEL YOU ASKED YOU A LITTLE BIT ABOUT HOW

02:47:28 23   JUNOS CLI COMMANDS WERE CREATED.

02:47:30 24   NOW YOU NEVER WORKED AT CISCO ON THE CREATION OF ANY CISCO

02:47:33 25   CLI COMMANDS; RIGHT?

02:47:34 1   A.   NO, I DID NOT.

02:47:35 2   Q.   AND BACK WHEN YOU WERE DEVELOPING THE JUNOS CLI IN THE

02:47:40 3   1997 TIME PERIOD, YOU ACTUALLY HAD VERY LITTLE EXPERIENCE WITH

02:47:44 4   THE CISCO IOS CLI; ISN'T THAT RIGHT?

02:47:46 5   A.   THAT IS TRUE.

02:47:47 6   Q.   AND IN FACT, I THINK YOU SAID YOU HAD VERY, VERY SMALL

02:47:50 7   AMOUNTS OF EXPOSURE TO THE CISCO CLI, CORRECT?

02:47:53 8   A.   THAT IS TRUE.

02:47:54 9   Q.   AND AT YOUR DEPOSITION, YOU TESTIFIED THAT EVEN TODAY YOU

02:47:59 10   DON'T HAVE A SPECIFIC AWARENESS OF THE CISCO CLI COMMAND AND

02:48:05 11   SUBCOMMAND STRUCTURE; DO YOU REMEMBER THAT?

02:48:06 12   A.   YES, I DO, THAT IS TRUE.

02:48:08 13   Q.   AND THAT'S BECAUSE YOU ARE NOT AN IOS USER, CORRECT?

02:48:11 14   A.   YEAH. WE HAVE -- I'VE USED SOME OF THE SMALLER IOS BOXES.

02:48:16 15   BUT, YOU KNOW, ALONG MY CAREER PATH, I'VE RUN SEVERAL NETWORKS

02:48:21 16   AND I'VE NEVER RUN THE IOS-BASED NETWORK.

02:48:23 17   Q.   SURE.

02:48:24 18   SO YOU HAVE NO PERSONAL KNOWLEDGE OF HOW ANY OF THE CISCO

02:48:28 19   CLI COMMANDS THAT MAY BE DISPUTED IN THIS CASE WERE CREATED,

02:48:33 20   CORRECT?

02:48:34 21   A.   YES, THAT'S TRUE.

02:48:35 22   Q.   AND YOU HAVE NO KNOWLEDGE OF HOW ANY OF THE CISCO MODES

02:48:40 23   AND PROMPTS CAME INTO BEING AT CISCO, CORRECT?

02:48:42 24   A.   THAT IS TRUE.

02:48:42 25   Q.   AND THAT'S BECAUSE, IN YOUR WORDS, CISCO IOS WAS A FAIRLY

02:48:49   1   OLD AND DATED SYSTEM BY THE TIME YOU STARTED WORKING AT

02:48:53   2   JUNIPER, CORRECT?

02:48:54   3   A.   YES.

02:48:54   4   Q.   NOW COUNSEL FOR CISCO ASKED YOU ABOUT SOME OF THE

02:49:02   5   DIFFERENCES AND SYNTAX AND SOFTWARE ORGANIZATION BETWEEN THE

02:49:06   6   JUNOS CLI AND THE CISCO CLI. BUT YOU NOTED SOME DIFFERENCES

02:49:12   7   WHEN -- I'M SORRY, SOME SIMILARITIES WHEN CISCO'S COUNSEL PUT

02:49:17   8   UP THE LIST ON THE SCREEN; RIGHT?

02:49:18   9   A.   I WAS ABLE TO FIND ONE, YES.

02:49:20   10 Q.   SURE.

02:49:21   11   AND AT YOUR DEPOSITION, I'M NOT SURE IF YOU RECALL THIS,

02:49:23   12 BUT YOU WERE ALSO ASKED THE QUESTION OF A JUNOS CLI COMMAND

02:49:27   13 CALLED "SHOW INTERFACES."

02:49:28   14   DO YOU REMEMBER THAT?

02:49:29   15 A.   YES.

02:49:29   16 Q.   AND IS "SHOW INTERFACES" A CLI COMMAND THAT'S SUPPORTED BY

02:49:32   17 THE JUNOS CLI?

02:49:33   18 A.   YES, IT IS.

02:49:34   19 Q.   AND ARE YOU AWARE THAT THE "SHOW INTERFACES" COMMAND IS

02:49:38   20 ALSO SUPPORTED BY THE CISCO IOS CLI?

02:49:41   21 A.   YES, I'M AWARE OF THAT.

02:49:42   22 Q.   OKAY.

02:49:44   23 A.   I SHOULD NOTE THAT THE ARGUMENTS UNDER THE TWO ARE VERY

02:49:47   24 DIFFERENT.

02:49:47   25 Q.   FAIR ENOUGH. BUT THE FIRST TWO WORDS ARE "SHOW

02:49:51 1   INTERFACES," CORRECT?

02:49:51 2   A.   YES.

02:49:52 3   Q.   AND WHAT MIGHT FOLLOW THAT COULD BE DIFFERENT BASED UPON

02:49:54 4   THE DIFFERENT COMPANIES; RIGHT?

02:49:56 5   A.   YES.

02:49:56 6   Q.   SO JUNIPER, CONSIDERING THE DESIGN CONSTRAINTS IN CREATING

02:50:02 7   A CLI, THEY CAME UP WITH THE EXACT SAME "SHOW INTERFACES"

02:50:07 8   COMMAND THAT CISCO IOS CAME UP WITH; RIGHT?

02:50:09 9   A.   YES, I THINK IT'S THE OBVIOUS CHOICE.

02:50:11 10   Q.   RIGHT. IT'S THE OBVIOUS CHOICE, CORRECT?

02:50:14 11   A.   YES.

02:50:14 12   Q.   AND YOU MENTIONED ALSO THAT THE "SHOW ARP" COMMAND, WHICH

02:50:18 13   IS SUPPORTED BY BOTH THE JUNOS CLI AND THE CISCO IOS CLI, THAT

02:50:21 14   TOO WAS AN OBVIOUS CHOICE, CORRECT?

02:50:23 15   A.   YES.

02:50:23 16   Q.   AND IN FACT, THERE'S ACTUALLY MORE COMMANDS ON THAT LIST

02:50:27 17   THAT ARE SUPPORTED BY BOTH CISCO AND JUNOS CLI; IS THAT RIGHT?

02:50:32 18   A.   I STOPPED WHEN I FOUND THE FIRST ONE, SORRY.

02:50:34 19   Q.   SURE, SURE.

02:50:35 20   ARE YOU FAMILIAR WITH THE "SHOW ISIS INTERFACE" COMMAND?

02:50:38 21   A.   YES.

02:50:39 22   Q.   IS THAT A COMMAND SUPPORTED BY THE JUNOS CLI?

02:50:41 23   A.   YES, IT IS.

02:50:42 24   Q.   ARE YOU AWARE THAT THAT SAME COMMAND IS SUPPORTED BY THE

02:50:44 25   CISCO IOS CLI?

02:50:46   1   A.   NO, I ACTUALLY WASN'T.

02:50:47   2   Q.   OH. CAN WE PUT UP THE SAME EXHIBIT ON THE SCREEN, PLEASE.

02:50:57   3   CAN WE GO TO "SHOW ISIS INTERFACE." THERE IT IS. ALL RIGHT.

02:51:02   4   SO THIS IS A LIST OF COMMANDS THAT CISCO SAYS THE CISCO

02:51:06   5   IOS CLI SUPPORTS. DO YOU SEE "SHOW ISIS INTERFACE" THERE?

02:51:12   6   A.   YES, I DO.

02:51:13   7   Q.   AND IS THAT ALSO AN OBVIOUS CHOICE FOR THAT COMMAND?

02:51:17   8   A.   YES.

02:51:17   9   Q.   AND CONSIDERING THE DESIGN CONSTRAINTS SURROUNDING THE

02:51:21   10   JUNOS CLI COMMAND CREATION, THIS WAS IT IS OBVIOUS CHOICE THAT

02:51:25   11   THOSE CONSTRAINTS LEAD TO, CORRECT?

02:51:27   12   A.   YES.

02:51:27   13   Q.   DOES THE JUNOS CLI ALSO SUPPORT THE "SHOW LLDP NEIGHBORS"

02:51:32   14   COMMAND?

02:51:32   15   A.   YES, IT DOES.

02:51:33   16   Q.   AND LLDP, THAT IS AN INDUSTRY STANDARD ACRONYM, CORRECT?

02:51:37   17   A.   YES.

02:51:38   18   Q.   AND ARE YOU AWARE THAT THE CISCO IOS CLI ALSO SUPPORTS

02:51:41   19   THAT EXACT SAME COMMAND?

02:51:42   20   A.   NO, I WASN'T, BUT IT'S ON THE IOS.

02:51:45   21   Q.   AND THAT'S AN OBVIOUS CHOICE TOO; RIGHT?

02:51:47   22   A.   I THINK SO.

02:51:48   23   Q.   AND WHAT ABOUT THE "SNMP MIB" COMMAND, IS THAT A JUNOS CLI

02:51:52   24   COMMAND?

02:51:53   25   A.   YES, IT IS.

02:51:53   1   Q.   AND "MIB" THERE, THAT'S AN INDUSTRY STANDARD TERM TOO;

02:51:57   2   RIGHT?

02:51:57   3   A.   YES, AS IS SNMP.

02:51:59   4   Q.   CORRECT.

02:51:59   5   AND ARE YOU AWARE THAT CISCO'S CLI ALSO SUPPORTS THAT

02:52:02   6   EXACT SAME COMMAND?

02:52:04   7   A.   ONCE AGAIN, IT'S LISTED ON PAGE 9.

02:52:12   8   Q.   AND WHAT ABOUT THE SHOW PTP CLOCK COMMAND, IS THAT A

02:52:17   9   COMMAND THAT IS SUPPORTED BY THE JUNOS CLI?

02:52:19   10   A.   IT'S NOT A COMMAND I'M FAMILIAR WITH, BUT IT WOULDN'T

02:52:24   11   SURPRISE ME.

02:52:25   12   Q.   DO YOU KNOW EITHER WAY?

02:52:25   13   A.   NO.

02:52:26   14   Q.   HOW ABOUT THE SHOW SPANNING-TREE INTERFACE COMMAND, ARE

02:52:30   15   YOU FAMILIAR WITH THAT COMMAND IN JUNOS?

02:52:31   16   A.   YES.

02:52:31   17   Q.   IS THAT ALSO A COMMAND SUPPORTED BY THE CISCO IOS CLI?

02:52:34   18   A.   YES.

02:52:35   19   Q.   IS THAT ALSO THE OBVIOUS CHOICE THAT THE JUNOS ENGINEERS

02:52:38   20   ARRIVED AT?

02:52:40   21   A.   YES.

02:52:40   22   Q.   NOW JUNIPER SUPPORTS A WIDE VARIETY OF SHOW MULTIWORD

02:52:47   23   COMMANDS, CORRECT?

02:52:48   24   A.   YES.

02:52:49   25   Q.   AND JUNOS ALSO SUPPORTS A WIDE VARIETY OF MULTIWORD CLEAR

02:52:55 1   COMMANDS; RIGHT?

02:52:56 2   A.   YES.

02:52:56 3   Q.   THAT'S WHERE THE COMMAND STARTS WITH CLEAR, THEN IT'S

02:52:59 4   FOLLOWED BY SOMETHING THAT IS GOING TO BE CLEARED, CORRECT?

02:53:02 5   A.   YES.

02:53:02 6   Q.   AND THE CHOICE OF "SHOW" AND "CLEAR," THOSE WERE ALSO

02:53:05 7   OBVIOUS DESIGN CHOICES FOR JUNIPER ENGINEERS, CORRECT?

02:53:09 8   A.   YES, I BELIEVE SO.

02:53:10 9   Q.   NOW MR. SHAFER, YOU HAVE BEEN AN EMPLOYEE AT JUNIPER SINCE

02:53:22 10   1997; RIGHT?

02:53:23 11   A.   YES.

02:53:23 12   Q.   AND YOU HAVE BEEN THERE FOR 19 YEARS, I BELIEVE YOU SAID?

02:53:27 13   A.   YES.

02:53:28 14   Q.   AND OVER THE TWO DECADES THAT YOU'VE WORKED AT JUNIPER, DO

02:53:32 15   YOU BELIEVE THAT JUNIPER HAS ACTED AS AN ETHICAL COMPANY?

02:53:35 16   A.   YES, I BELIEVE SO.

02:53:37 17   Q.   DO YOU BELIEVE FROM YOUR TWO DECADES WORKING AT JUNIPER,

02:53:41 18   THAT JUNIPER HAS TRIED TO RESPECT THE INTELLECTUAL PROPERTY

02:53:45 19   RIGHTS OF OTHER COMPANIES?

02:53:47 20   A.   WE CERTAINLY DO IN MY GROUP.

02:53:49 21   Q.   INCLUDING ITS COMPETITORS; RIGHT?

02:53:51 22   A.   YES.

02:53:52 23   Q.   SO YOU ARE AWARE, THOUGH, THAT IN 2002, JUST A FEW YEARS

02:53:57 24   AFTER YOU CREATED THE JUNOS CLI, THAT JUNIPER RELEASED A

02:54:02 25   PRODUCT LINE WITH, I THINK WE SPOKE ABOUT IT A LITTLE EARLIER,

02:54:07 1   THE JUNOS-E CLI, CORRECT?

02:54:09 2   A.   YES, WE ACQUIRED A COMPANY CALLED UNISPHERE THAT HAD

02:54:12 3   EXISTING SOFTWARE AND HAD EXISTING CUSTOMERS, AND WE CONTINUED

02:54:16 4   TO SUPPORT THEM.

02:54:16 5   Q.   WHAT WAS THAT COMPANY CALLED UNISPHERE?

02:54:19 6   A.   UNISPHERE.

02:54:20 7   Q.   THANK YOU.

02:54:21 8   AND THAT PRODUCT THAT JUNIPER ACQUIRED AND THEN SOLD UNDER

02:54:24 9   ITS OWN NAME STARTING IN 2002, THAT PRODUCT USED HUNDREDS OF

02:54:29 10   THE SAME CLI COMMANDS THAT ARE SUPPORTED BY THE CISCO IOS CLI;

02:54:34 11   RIGHT?

02:54:34 12   A.   YES.

02:54:35 13   Q.   AND IT SUPPORTED THE SAME COMMAND MODES AND THE SAME

02:54:40 14   COMMAND PROMPTS THAT THE CISCO IOS CLI SUPPORTED; RIGHT?

02:54:43 15   A.   I BELIEVE THAT WAS THE GOAL, YES.

02:54:45 16   Q.   OKAY. AND THAT STARTED IN 2002, JUNIPER STARTED SELLING

02:54:48 17   THAT PRODUCT IN 2002, CORRECT?

02:54:51 18   A.   YES. I'M FUZZY ON THE DATE, BUT YES, I WAS THINKING IT

02:54:58 19   WAS 2004, BUT 2002 COULD BE CORRECT.

02:55:03 20   Q.   EARLY 2000'S?

02:55:04 21   A.   YES.

02:55:05 22   Q.   AND JUNIPER CONTINUED TO DEVELOP AND BUILD UPON THE

02:55:08 23   JUNOS-E CLI FOR AT LEAST 14 YEARS, CORRECT? BEFORE IT WAS

02:55:12 24   END-OF-LIFE'D?

02:55:16 25   A.   YES.

02:55:17 1   Q.   RIGHT.

02:55:17 2   WHEN CISCO'S COUNSEL ASKED YOU WHETHER OR NOT THE JUNOS-E

02:55:21 3   PRODUCTS HAD REACHED ITS END OF LIFE THAT, HAPPENED VERY

02:55:25 4   RECENTLY, CORRECT?

02:55:26 5   A.   YES. WE STARTED SOME TIME IN THE 2009, 2010 TO

02:55:37 6   INCORPORATE THE FEATURES OF THAT DEVICE INTO JUNOS PROPER. YOU

02:55:41 7   KNOW, IT TAKES A WHILE FOR TO DEVELOP SOFTWARE AND TEST AND

02:55:45 8   EXPOSE IT TO CUSTOMERS AND MAKE THEM HAPPY, AND SO IT WAS A

02:55:49 9   LENGTHY PROCESS --

02:55:51 10   Q.   OKAY. SURE.

02:55:52 11   A.   -- TO TAKE AWAY FROM THAT.

02:55:53 12   Q.   BUT THE JUNOS-E PRODUCT WAS STILL BEING SOLD BY JUNIPER AS

02:55:57 13   RECENTLY AS 2014; RIGHT?

02:55:59 14   A.   SURE.

02:55:59 15   Q.   OKAY.

02:56:00 16   AND SO FOR AT LEAST 12 YEARS, JUNIPER WAS OPENLY SELLING A

02:56:05 17   CLI THAT HAD HUNDREDS OF THE SAME CLI COMMANDS AS CISCO IOS, AS

02:56:11 18   WELL AS THE SAME MODES AND PROMPTS AS CISCO IOS; RIGHT?

02:56:15 19   A.   WE ARE VERY SIMILAR, YEAH.

02:56:18 20   Q.   AND DO YOU BELIEVE THAT JUNIPER WOULD HAVE OFFERED A CLI

02:56:21 21   IN ONE OF ITS PRODUCTS THAT HAD HUNDREDS OF THE SAME CLI

02:56:24 22   COMMANDS AS CISCO IOS AND THE SAME MODES AND PROMPTS IF JUNIPER

02:56:29 23   BELIEVED THAT THAT WERE A VIOLATION OF CISCO'S COPYRIGHTS?

02:56:34 24   A.   I CAN'T SPEAK FOR THAT.

02:56:38 25   MR. WONG: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

02:56:42 1   MR. PAK: JUST A FEW QUESTIONS.

02:56:44 2   THE COURT: OKAY.

02:56:45 3   **REDIRECT EXAMINATION**

02:56:46 4   BY MR. PAK:

02:56:47 5   Q.   MR. SHAFER, WE CAN PULL OUT THAT EXHIBIT AGAIN.

02:56:51 6   OKAY. NOW, MR. WONG ASKED YOU A FEW QUESTIONS ABOUT SOME

02:57:00 7   OF THE COMMANDS THAT MAY LOOK SIMILAR TO THE COMMANDS YOU

02:57:02 8   AUTHORED AT JUNIPER. BUT ISN'T IT TRUE AS YOU SCAN THIS LIST,

02:57:06 9   THERE ARE DOZENS AND DOZENS OF COMMANDS HERE THAT LOOK NOTHING

02:57:10 10   LIKE THE COMMANDS YOU HAVE HERE AT JUNIPER?

02:57:12 11   A.   THAT IS TRUE. IN FACT, IF I LOOK ON THE FIRST PAGE I SEE

02:57:20 12   NONE.

02:57:21 13   Q.   NONE. NONE OF THE COMMANDS ON PAGE 1 IS USING JUNIPER

02:57:27 14   IOS; IS THAT RIGHT?

02:57:28 15   A.   YES.

02:57:28 16   Q.   SO TAKE A LOOK AT PAGE 2. HOW MANY DO YOU SEE THERE THAT

02:57:32 17   YOU THINK IS SIMILAR TO JUNIPER CLI?

02:57:47 18   A.   I SEE ONE OR PERHAPS TWO.

02:57:49 19   Q.   LET'S TAKE A LOOK AT PAGE 3, HOW MANY DO YOU SEE THERE

02:57:53 20   THAT ARE THE SAME?

02:57:53 21   A.   NONE.

02:57:54 22   Q.   LET'S LOOK AT PAGE 4, HOW MANY DO YOU SEE ON THIS PAGE

02:57:57 23   THAT LOOKS THE SAME?

02:57:58 24   A.   NONE.

02:57:59 25   Q.   LET'S LOOK AT PAGE 5, HOW MANY OF THESE COMMANDS LOOK THE

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02:58:03   1        SAME AS JUNIPER?

02:58:15   2   A.   AS COMMANDS?  NONE.

02:58:18   3   Q.   LOOK AT PAGE 6.  HOW MANY OF THESE COMMANDS LOOK THE SAME

02:58:22   4   AS JUNIPER COMMANDS?

02:58:24   5             MR. WONG:  OBJECTION.  VAGUE.  VAGUE AS TO OPERATING

02:58:27   6   SYSTEM.

02:58:28   7             MR. PAK:  JUNOS, YOUR HONOR.

02:58:29   8             THE COURT:  THANK YOU.

02:58:30   9   BY MR. PAK:

02:58:30  10   Q.   SO ALL MY QUESTIONS, TO DATE, MR. SHAFER, HAVE BEEN ABOUT

02:58:34  11   JUNOS, THE ONE THAT YOU DESIGNED.

02:58:36  12        HOW MANY OF THESE COMMANDS ON PAGE 6 ARE THE SAME AS THE

02:58:38  13   JUNOS CLI THAT YOU BUILT?

02:58:40  14   A.   AS COMMANDS, NONE.

02:58:41  15   Q.   HOW ABOUT PAGE 7?  HOW MANY OF THESE LOOK LIKE JUNIPER

02:58:48  16   COMMANDS?

02:58:50  17             MR. WONG:  OBJECTION.  VAGUE.

02:58:52  18             MR. PAK:  JUNIPER JUNOS CLI COMMANDS.

02:58:57  19             THE WITNESS:  FIVE, OR PERHAPS SIX.

02:59:08  20   BY MR. PAK:

02:59:09  21   Q.   MR. SHAFER, WHAT'S OBVIOUS TO YOU AS A CLI DESIGNER MAY

02:59:17  22   NOT BE OBVIOUS TO ANOTHER ENGINEER AT A DIFFERENT COMPANY;

02:59:21  23   ISN'T THAT TRUE?

02:59:21  24   A.   THAT'S TRUE.

02:59:24  25        IN ADDITION, THERE'S -- IF YOU LOOK AT SOME OF THE
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02:59:32 1   COMMANDS, THEY ARE UNDER IP, OR IPV6. AND THAT'S -- THAT, TO

02:59:39 2   ME, I THINK SPEAKS OF THE CREDIT -- THE ORIGINS OF IOS.

02:59:49 3   WHEREAS WE, COMING IN LATER IN THE GAME, WE WERE ABLE TO DO A

02:59:53 4   CLEANER DESIGN.

02:59:54 5   Q.   CAN YOU EXPLAIN THAT A LITTLE BIT FURTHER. YOU TALKED

02:59:56 6   ABOUT IPV6; IS THAT RIGHT?

02:59:58 7   A.   WELL, JUST LIKE THE -- SO IF YOU LOOK BACK IN LIKE THE

03:00:06 8   MID-80'S, THERE WERE HALF A DOZEN, A DOZEN DIFFERENT COMPETING

03:00:15 9   PROTOCOLS, OF WHICH IP WAS ONE. SO IN THE CISCO STYLE, THEY DO

03:00:22 10   SHOW IP SOMETHING.

03:00:24 11   BY THE TIME JUNIPER ENTERED THE WORLD, IP WAS THE CLEAR

03:00:29 12   WINNER, SO WE DIDN'T NEED THE IP AS A QUALIFIER IN OUR

03:00:33 13   COMMANDS. THERE WAS NO USE FOR IT. SO THE OBVIOUS CHOICE WAS

03:00:38 14   TO NOT USE IT. WHEREAS, THEIR ENGINEERS WERE OPERATING IN A

03:00:41 15   DIFFERENT TIMEFRAME, I THINK THAT WAS A REASONABLE CHOICE.

03:00:45 16   Q.   OKAY.

03:00:47 17   MR. SHAFER, SO IT'S IMPORTANT TO LOOK AT ALSO THE TIME

03:00:50 18   WHEN COMMANDS ARE CREATED TO ASSESS WHETHER THAT WOULD HAVE

03:00:54 19   BEEN OBVIOUS TO YOU OR NOT; ISN'T THAT TRUE?

03:00:56 20   A.   SURE.

03:00:56 21   Q.   AND YOU NEVER SAT DOWN, OR TO YOUR KNOWLEDGE ANYONE AT

03:01:05 22   JUNIPER SAT DOWN AND COPIED CISCO CLI COMMANDS OUT OF CISCO

03:01:09 23   EQUIPMENT TO YOUR KNOWLEDGE; DO YOU KNOW OF ANYTHING LIKE THAT

03:01:11 24   HAPPENING?

03:01:11 25   A.   I DO NOT.

03:01:12	1	Q. TO YOUR KNOWLEDGE HAS ANYONE AT JUNIPER SAT DOWN AND
03:01:14	2	COPIED SCREEN OUTPUTS OUT OF CISCO EQUIPMENT RUNNING AT
03:01:18	3	JUNIPER?
03:01:18	4	A. NO.
03:01:19	5	Q. AND TO YOUR KNOWLEDGE HAS ANYONE SAT DOWN AT JUNIPER AND
03:01:23	6	COPIED HELP DESCRIPTION COMING OUT OF CISCO EQUIPMENT RUNNING
03:01:26	7	AT JUNIPER?
03:01:27	8	A. NO.
03:01:27	9	Q. DID YOU SLAVISHLY COPY ANYTHING FROM CISCO IN TERMS OF THE
03:01:31	10	CLI DESIGN?
03:01:31	11	A. WE SLAVISHLY TRIED TO BE INDEPENDENT AND DIFFERENT.
03:01:34	12	MR. PAK: THANK YOU.
03:01:37	13	THE COURT: MR. WONG?
03:01:37	14	**RECROSS-EXAMINATION**
03:01:50	15	BY MR. WONG:
03:01:50	16	Q. NOW MR. SHAFER, MY QUESTIONS ARE ABOUT THE JUNOS-E CLI
03:01:55	17	THAT JUNIPER SOLD FROM 2002 FOR 12 YEARS.
03:01:59	18	WOULD YOU BE SURPRISED, MR. SHAFER, IF HUNDREDS OF THE
03:02:03	19	COMMANDS LISTED ON THIS EXHIBIT WERE SUPPORTED BY THE JUNIPER
03:02:08	20	JUNOS-E CLI?
03:02:12	21	A. NO, I WOULDN'T BE. I THINK THEIR GOAL WAS TO BE CLOSER TO
03:02:16	22	IOS THAN WE CERTAINLY WANT TO BE.
03:02:19	23	Q. I'M SORRY. CAN YOU SAY THAT AGAIN?
03:02:21	24	A. THEIR GOAL WAS TO BE CLOSER TO IOS STYLE THAN WE WANTED TO
03:02:25	25	BE, WE IN THE JUNOS SIDE, WANTED TO BE.

03:02:29 1   Q.   AND THE FACT THAT JUNIPER'S JUNOS-E CLI WAS USING HUNDREDS

03:02:33 2   OF THE SAME COMMANDS THAT ARE AT ISSUE IN THIS CASE, WAS THAT

03:02:37 3   SOMETHING THAT JUNIPER WOULD HIDE FROM ITS CUSTOMERS OR THE

03:02:41 4   PUBLIC?

03:02:43 5   A.   TO MY KNOWLEDGE, WE DIDN'T HIDE IT.

03:02:47 6   Q.   ARE THESE COMMANDS, TO THE EXTENT THAT THEY ARE SUPPORTED

03:02:49 7   BY THE JUNIPER JUNOS-E CLI FROM 2002 UP UNTIL WHEN IT WAS

03:02:55 8   DISCONTINUED RECENTLY, WOULD THOSE HAVE BEEN DOCUMENTED IN

03:02:58 9   PUBLIC DOCUMENTATION BY JUNIPER?

03:02:59 10   A.   YES, THEY WOULD HAVE BEEN.

03:03:01 11   Q.   AND WOULD THOSE BE AVAILABLE TO JUNIPER'S WEBSITE?

03:03:03 12   A.   YES, THEY WOULD HAVE BEEN.

03:03:05 13   MR. WONG: THANK YOU.

03:03:05 14   NO FURTHER QUESTIONS.

03:03:06 15   MR. PAK: NO QUESTIONS, YOUR HONOR.

03:03:07 16   THE COURT: AND MAY MR. SHAFER BE EXCUSED?

03:03:14 17   MR. PAK: YES.

03:03:14 18   THE COURT: MR. SHAFER, THANK YOU FOR YOUR TESTIMONY.

03:03:16 19   YOU ARE FREE TO GO.

03:03:17 20   ALL RIGHT, EVERYONE, I THINK IT'S TIME FOR OUR BREAK,

03:03:20 21   PROBABLY A LITTLE BIT PAST, BUT I DIDN'T WANT TO KEEP

03:03:23 22   MR. SHAFER HERE.

03:03:24 23   ALL RIGHT. LET'S COME BACK AT A QUARTER PAST.

03:03:30 24   (RECESS FROM 3:03 P.M. UNTIL 3:16 P.M.)

03:16:36 25   THE COURT: PLEASE BE SEATED, EVERYONE.

03:16:48 1   WE ARE BACK ON THE RECORD. I REPLENISHED MY PAPER, MY PEN

03:16:53 2   RAN OUT OF INK. I THINK I'M SET NOW.

03:16:56 3   OKAY. ALL RIGHT. LET'S SEE, NOW WE ARE GOING TO RETURN

03:17:00 4   TO ARISTA'S PRESENTATION.

03:17:02 5   AND MR. FERRALL, THIS IS YOUR WITNESS?

03:17:04 6   MR. FERRALL: IT IS. AND WE WOULD LIKE TO CALL

03:17:06 7   DR. JOHN BLACK AS OUR NEXT WITNESS.

03:17:09 8   THE COURT: OKAY.

03:17:19 9   DR. BLACK, IF YOU WOULD COME FORWARD TO THE WITNESS STAND,

03:17:21 10   PLEASE, AND STAND TO BE SWORN.

03:17:24 11   (**DEFENDANT'S WITNESS, JOHN BLACK, WAS SWORN.**)

03:17:24 12   THE WITNESS: YES.

03:17:34 13   MR. FERRALL: AND YOUR HONOR, WE HAVE A SUBSTANTIAL

03:17:35 14   NUMBER OF EXHIBITS, A VOLUME.

03:17:37 15   THE COURT: I COULDN'T MANAGE THEM.

03:17:40 16   MR. FERRALL: WHAT WE HAVE -- IN THE INTEREST OF,

03:17:43 17   PERHAPS YOUR LACK OF OR YOUR DESIRE AND ATTENTION, WE HAVE TWO

03:17:51 18   BINDERS OF THE SMALLER EXHIBITS THAT DR. BLACK MAY USE, THEN

03:17:56 19   THE LARGER MANUALS THAT MAY OR MAY NOT BE INTRODUCED, WE WILL

03:18:01 20   JUST HOLD ON TO THOSE.

03:18:02 21   THE COURT: THANK YOU. I APPRECIATE THAT.

03:18:02 22   THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR

03:18:06 23   LAST NAME FOR THE RECORD.

03:18:06 24   THE WITNESS: MY NAME IS JOHN BLACK. B-L-A-C-K.

03:18:06 25   ///

DIRECT EXAMINATION

03:18:45   1

03:18:45   2   BY MR. FERRALL:

03:18:46   3   Q.   GOOD AFTERNOON, DR. BLACK.

03:18:47   4   A.   GOOD AFTERNOON.

03:18:48   5   Q.   IF YOU COULD PLEASE INTRODUCE YOURSELF TO THE JURY. TELL

03:18:54   6   THEM A LITTLE BIT ABOUT WHERE YOU LIVE AND YOUR FAMILY.

03:18:56   7   A.   SURE. LIKE I SAID, MY NAME IS JOHN BLACK. I'M AN

03:19:02   8   ASSOCIATE PROFESSOR OF COMPUTER SCIENCE OUT IN BOULDER,

03:19:05   9   COLORADO, THE UNIVERSITY OF COLORADO, BOULDER.

03:19:07   10   I LIVE IN A TOWN CALLED SUPERIOR, IT'S ABOUT HALFWAY

03:19:12   11   BETWEEN DENVER AND BOULDER.

03:19:14   12   AND I HAVE TWO YOUNG SONS, AGES 11 AND 13.

03:19:17   13   Q.   DR. BLACK, DO YOU HAVE ANY CONNECTIONS TO THE BAY AREA?

03:19:20   14   A.   YEAH, ACTUALLY, I GREW UP HERE. I GREW UP IN OAKLAND,

03:19:24   15   JUST ACROSS THE WATER, FOR THE FIRST 40 YEARS OF MY LIFE I'VE

03:19:29   16   LIVED OVER THERE.

03:19:29   17   Q.   AND DO YOU HAVE ANY HOBBIES YOU LIKE TO DO IN YOUR SPARE

03:19:35   18   TIME?

03:19:35   19   A.   YEAH, A FEW. IN PARTICULAR, I LIKE TO ROCK CLIMB A LOT.

03:19:38   20   I'VE BEEN DOING IT FOR A VERY LONG TIME, AND NOW I TAKE MY KIDS

03:19:43   21   OUT AND TO DO IT.

03:19:44   22   Q.   ANY CLIMBS OF NOTE?

03:19:45   23   A.   WELL, LOTS. BUT IN PARTICULAR, I TOOK A YEAR OFF IN 1994

03:19:50   24   AND I LIVED IN MY CAR IN YOSEMITE AND I CLIMBED HALF DOME AND

03:19:56   25   EL CAPITAN AND ALL THE BIG WALLS THERE.

03:19:57 1   Q.   WELL, THIS SHOULD BE EASIER THAN THAT, I HOPE.

03:20:00 2   THE COURT: WE WILL WAIT UNTIL HE'S DONE, HE CAN TELL

03:20:03 3   YOU IF THAT'S TRUE.

03:20:04 4   BY MR. FERRALL:

03:20:05 5   Q.   DR. BLACK, WHEN DID YOU BECOME INTERESTED IN TECHNOLOGY?

03:20:07 6   A.   FROM A VERY EARLY AGE. ABOUT AGE 12 I STARTED MESSING

03:20:13 7   AROUND WITH THE PHONE NETWORK. BY AGE 14, I STARTED TAKING A

03:20:17 8   BUS UP TO THIS PLACE CALLED THE HALL OF SCIENCE IN BERKELEY,

03:20:22 9   AND THEY LET YOU USE THE COMPUTERS UP THERE FOR A FEW CENTS AN

03:20:25 10   HOUR.

03:20:26 11   AFTER THAT MY DAD, WE HAD A TYPEWRITER BUSINESS, SAW THE

03:20:29 12   OPPORTUNITY, SAW THE COMING ONSLAUGHT OF PERSONAL COMPUTERS,

03:20:33 13   AND HE HAD A SON WHO WAS INTERESTED IN TECHNOLOGY, AND WANTED

03:20:36 14   TO LEVERAGE THAT TO SELL COMPUTERS AND CREATE CUSTOM PROGRAMS

03:20:40 15   AND GET INTO THAT BUSINESS IN THE 70'S.

03:20:42 16   Q.   WHEN IS THE FIRST TIME YOU HEARD OF OR WORKED ON A

03:20:47 17   COMMAND-LINE INTERFACE -- WORKED WITH A COMMAND-LINE INTERFACE?

03:20:50 18   A.   IT WOULD HAVE BEEN AROUND THAT TIME. SOMETIMES MY DAD'S

03:20:54 19   CUSTOMERS WOULD WANT A CUSTOM PIECE OF SOFTWARE WRITTEN BY ME.

03:20:58 20   AND I WOULD WRITE, OFTEN TIMES, FOUR OR FIVE TIMES, CLI'S OR

03:21:04 21   COMMAND-LINE INTERFACES FOR BUSINESS PURPOSES, USUALLY.

03:21:06 22   Q.   COULD YOU TELL US ABOUT YOUR EDUCATIONAL EXPERIENCE.

03:21:09 23   A.   SURE. SO I WENT TO OAKLAND HIGH SCHOOL, GRADUATED IN

03:21:15 24   1980. AND THEN I WENT TO CAL STATE HAYWARD, WHICH I GUESS IS

03:21:19 25   NOW CALLED CAL STATE EAST BAY. I GRADUATED IN '88. AND THEN I

03:21:24 1   WENT TO UC DAVIS, AND I GOT A PH.D. IN COMPUTER SCIENCE IN

03:21:29 2   2000.

03:21:29 3   Q.   AND WHAT WAS THE FOCUS OF YOUR STUDIES FOR YOUR PH.D.?

03:21:34 4   A.   I STARTED OUT STUDYING MATHEMATICS AND ALGORITHMS, BUT I

03:21:37 5   WANTED TO APPLY THAT TO NETWORK SECURITY. SO I EVENTUALLY

03:21:41 6   MOVED IN TO CRYPTOGRAPHY AND NETWORK SECURITY.

03:21:44 7   Q.   AND DID YOU WORK WHILE YOU WERE IN COLLEGE?

03:21:47 8   A.   IN UNDER GRAD, I DID. I WORKED FOR MY DAD IN THE CAPACITY

03:21:54 9   I STATED BEFORE, AND THEN IN GRAD SCHOOL I WAS A TEACHING AND

03:21:56 10   RESEARCH ASSISTANT.

03:21:57 11   Q.   WHAT DID YOU DO AFTER GRADUATING COLLEGE?

03:22:00 12   A.   I'M SORRY, FROM UNDER GRAD OR --

03:22:03 13   Q.   FROM UNDER GRAD.

03:22:06 14   A.   FROM UNDER GRAD, I GOT A JOB AT A PLACE CALLED INGRES,

03:22:10 15   WHICH IS NO LONGER AROUND. THEY PRODUCED DATABASES, AND I WAS

03:22:13 16   A FULL TIME PROGRAMMER THERE FOR SIX YEARS. I WORKED ON THEIR

03:22:17 17   DATA TYPES FACILITY. I WORKED ON THEIR COMMAND-LINE INTERFACE,

03:22:20 18   WHICH WAS A DATABASE COMMAND-LINE INTERFACE, AND PROCESSED A

03:22:23 19   LANGUAGE CALLED SQL, A VERY LARGE AND COMPLEX PARSER IN THAT

03:22:28 20   PRODUCT. THAT'S THE BIGGEST CLI I'VE EVER WORKED ON.

03:22:31 21   Q.   DO YOU RECALL THE TYPES OF COMPUTERS THAT WERE AT INGRES

03:22:38 22   WHEN YOU WERE WORKING THERE?

03:22:39 23   A.   AT INGRES WE USED UNIX AND VMS. I EXCLUSIVELY USED VMS

03:22:47 24   FOR THOSE SIX YEARS.

03:22:48 25   Q.   YOU MENTIONED THAT YOUR PH.D. WAS IN THE AREA OF NETWORK

BLACK DIRECT EXAM BY MR. FERRALL

03:22:51 1   SECURITY. WHAT ATTRACTED YOU TO THAT AREA?

03:22:54 2   A.   WELL, LIKE I SAID, I WAS INTERESTED IN NETWORKS FROM A

03:22:58 3   YOUNG AGE, AND I SAW AN OPPORTUNITY TO APPLY MY INTERESTS TO

03:23:03 4   THE INTERNET, WHICH WAS IN ITS INFANCY BACK THEN, BUT NOW IT'S

03:23:07 5   KIND OF A BIG DEAL.

03:23:08 6   AND I FIND THERE ARE VERY COMPELLING AND CHALLENGING

03:23:13 7   PROBLEMS IN HOW TO SECURE THE INTERNET. WE HAVE TO MAKE SURE

03:23:17 8   THE DATA GETS FROM WHERE IT'S STARTING TO WHERE IT'S GOING, AND

03:23:20 9   NOWHERE ELSE. AND TO ME THAT'S A FASCINATING AND CHALLENGING

03:23:24 10   PROBLEM.

03:23:24 11   Q.   CAN YOU TELL US HOW YOU GOT FROM YOUR PH.D., TO COLORADO

03:23:29 12   UNIVERSITY WHERE YOU ARE NOW?

03:23:31 13   A.   SURE.

03:23:32 14   SO I GRADUATED IN 2000. MY FIRST JOB WAS AT THE

03:23:35 15   UNIVERSITY OF NEVADA, RENO, UP BY LAKE TAHOE, FOR A COUPLE OF

03:23:39 16   YEARS THERE. THEN IN 2002, I MOVED FROM THERE TO BOULDER.

03:23:43 17   Q.   WHAT CLASSES DO YOU TEACH AT BOULDER?

03:23:46 18   A.   AT BOULDER, I TEACH A VARIETY OF CLASSES, INCLUDING A

03:23:51 19   NUMBER OF TIMES I'VE TAUGHT NETWORK SECURITY WHICH INCLUDES

03:23:54 20   TOPICS LIKE THE ALPHABET SOUP YOU'VE BEEN HEARING IP, ARP, UDP,

03:24:01 21   TCP, SSL, A BUNCH OF DIFFERENT NETWORK PROTOCOLS AND HOW TO

03:24:06 22   MAKE THEM SECURED.

03:24:07 23   Q.   DO YOU HAVE ANY PEER-REVIEWED PUBLICATIONS?

03:24:10 24   A.   I HAVE 20, 30, SOMETHING LIKE THAT, PEER-REVIEWED

03:24:13 25   PUBLICATIONS.

03:24:13 1   Q.   AND ARE YOU CURRENTLY TEACHING AT BOULDER?

03:24:16 2   A.   NO, ACTUALLY I'M ON A TWO-YEAR LEAVE OF ABSENCE.

03:24:19 3   SO THROUGH 2017, I TOOK THE LEAVE IN ORDER TO START A NEW

03:24:23 4   COMPANY WITH SOME COLLEAGUES. THE COMPANY IS TRYING TO TAKE

03:24:28 5   NOMINALLY COMPETENT TECHNICAL PEOPLE AND MAKE THEM NETWORK

03:24:32 6   SECURITY SPECIALISTS.

03:24:33 7   Q.   DO YOU HAVE ANY EXPERIENCE WITH INDUSTRY STANDARD

03:24:37 8   ORGANIZATIONS?

03:24:38 9   A.   YEAH. SOME OF MY WORK I HAVE GONE OUT TO MARYLAND, THIS

03:24:43 10   PLACE CALLED NIST, THE NATIONAL INSTITUTE FOR STANDARDS AND

03:24:47 11   TECHNOLOGY, AND PROMOTED SOME OF MY WORK, SOMETIMES OTHER

03:24:50 12   PEOPLE'S WORK, TO CREATE STANDARDS.

03:24:52 13   AND IN ONE CASE, ONE OF THOSE STANDARDS HAS NOW BEEN

03:24:56 14   ADOPTED BY THE ITEF INTO AN RFC THAT IS WIDELY AVAILABLE ON THE

03:25:01 15   INTERNET.

03:25:02 16   Q.   HAVE YOU EVER USED EITHER CISCO OR ANOTHER COMPANY'S

03:25:07 17   ETHERNET SWITCHES?

03:25:07 18   A.   CERTAINLY.

03:25:09 19   I THINK THE FIRST TIME I SAW A CISCO CLI WOULD HAVE BEEN

03:25:14 20   ABOUT 25 YEARS AGO, BACK WHEN I WAS AT INGRES, AND THAT'S ALL I

03:25:20 21   SAW FOR QUITE A WHILE.

03:25:22 22   NOW I'M THE CHAIR OF THE COMPUTING COMMITTEE WHICH

03:25:26 23   OVERSEES ALL THE SERVERS AND NETWORKS IN MY DEPARTMENT AT CU

03:25:30 24   BOULDER.

03:25:31 25   AND THERE WE USE A DELL SWITCH IN OUR DATA CENTER. WE

03:25:34 1   ALSO HAVE AN INSTRUCTIONAL LAB WHERE WE TEACH STUDENTS HOW TO

03:25:37 2   DO NETWORK, HOW TO USE THE CLI, AND IN THAT LABORATORY WE HAVE

03:25:41 3   CISCO SWITCHES AND ROUTERS, WE HAVE ARISTA, AND WE HAVE

03:25:45 4   JUNIPER.

03:25:46 5   Q.   HAVE YOU WRITTEN ANY SOFTWARE PROGRAMMING IN YOUR CAREER?

03:25:50 6   A.   YEAH, QUITE A BIT. I MEAN, THAT'S WHAT I WAS OBSESSED

03:25:55 7   WITH AS A KID. I DID IT A HOBBY FOR A LONG TIME. I DID IT AS

03:25:59 8   PART OF MY RESEARCH WORK. I STILL DO IT FOR CONSULTING FROM

03:26:03 9   TIME TO TIME WHERE I WRITE SOFTWARE. THOSE SIX YEARS AT

03:26:03 10   INGRES, ALL OF THAT WERE PROGRAMMING.

03:26:07 11   AND I ENJOY IT QUITE A BIT, SO I STILL TAKE THE

03:26:10 12   OPPORTUNITY ONCE IN A WHILE TO WRITE SOFTWARE WHENEVER I CAN.

03:26:13 13   MR. FERRALL: YOUR HONOR, AT THIS POINT I WOULD LIKE

03:26:15 14   TO TENDER DR. BLACK AS AN EXPERT IN NETWORKING, NETWORKING

03:26:18 15   PROTOCOLS AND COMMAND-LINE INTERFACE.

03:26:20 16   MR. NELSON: I DON'T THINK THERE'S AN EXPERT IN

03:26:22 17   COMMAND-LINE INTERFACE.

03:26:23 18   THE COURT: WOULD YOU LIKE TO VOIR DIRE THE WITNESS?

03:26:26 19   MR. NELSON: I CAN ASK HIM A FEW QUESTIONS.

03:26:28 20   THE COURT: IT'S YOUR CHOICE, MR. NELSON.

03:26:33 21   BY MR. NELSON:

03:26:35 22   Q.   SO, AND I DON'T HAVE ANY PROBLEM WITH YOUR QUALIFICATIONS,

03:26:40 23   SIR, SO I'M NOT ASKING THAT. I'M JUST ASKING ABOUT THIS

03:26:44 24   COMMAND-LINE INTERFACE THING.

03:26:45 25   SO THERE'S NO INDUSTRY STANDARD ORGANIZATION FOR

03:26:47 1   COMMAND-LINE INTERFACES; RIGHT?

03:26:50 2   A.   I MEAN, THERE ARE, THE IEEE, LET'S TAKE THAT EXAMPLE.

03:26:55 3   THEY HAVE A COMMAND-LINE INTERFACE STANDARD CALLED POSIX. IT'S

03:26:58 4   NOT A NETWORKING COMMAND-LINE INTERFACE, IT'S A UNIX

03:27:02 5   COMMAND-LINE INTERFACE.

03:27:02 6   Q.   RIGHT. OKAY. AND YOU HAVEN'T CONTRIBUTED ANY RFC'S TO

03:27:06 7   THAT; RIGHT, SIR?

03:27:07 8   A.   TECHNICALLY NOT CALLED RFC'S FOR THE IEEE, BUT NO, I

03:27:11 9   HAVEN'T CONTRIBUTED TO THAT STANDARD.

03:27:12 10   Q.   OKAY. SO YOU HAVEN'T CONTRIBUTED ON THAT.

03:27:15 11   AND YOU HAVEN'T TAUGHT ANY CLASSES ON COMMAND-LINE

03:27:17 12   INTERFACES; RIGHT?

03:27:17 13   A.   NO, I WOULD SAY I HAVE.

03:27:19 14   I MEAN, IN THE SENSE OF HOW TO USE A COMMAND-LINE

03:27:22 15   INTERFACE, ABSOLUTELY.

03:27:23 16   Q.   RIGHT. HOW TO USE A COMMAND-LINE INTERFACE, BUT NOT HOW

03:27:26 17   TO DESIGN A COMMAND-LINE INTERFACE; RIGHT?

03:27:27 18   A.   RUDIMENTARY PARSERS ARE UBIQUITOUS, AND I'VE SHOWN

03:27:34 19   STUDENTS HOW TO DO THAT AT A RUDIMENTARY LEVEL. BUT I NEVER --

03:27:39 20   TO BE RESPONSIVE, I'VE NEVER TAUGHT A CLASS THAT WAS JUST

03:27:42 21   ABOUT, LET'S BUILD A CLI.

03:27:43 22   Q.   OKAY.

03:27:45 23   MR. NELSON: YOUR HONOR, I DON'T HAVE ANY MORE

03:27:46 24   QUESTIONS ON THIS.

03:27:49 25   THE COURT: I WILL ALLOW THE WITNESS TO TESTIFY AS AN

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2088

03:27:51 1   EXPERT IN NETWORKING, NETWORKING PROTOCOL AND COMMAND-LINE

03:27:56 2   INTERFACE.

03:27:56 3   MR. FERRALL: THANK YOU, YOUR HONOR.

03:27:57 4   Q.   NOW DR. BLACK, HAVE YOU EVER TESTIFIED AT TRIAL BEFORE?

03:28:06 5   A.   THIS IS MY FIRST TIME IN FRONT OF A JURY.

03:28:08 6   Q.   ALL RIGHT. AND YOU'VE BEEN RETAINED BY ARISTA IN THIS

03:28:13 7   MATTER TO ANALYZE SOME QUESTIONS IN THE CASE; IS THAT RIGHT?

03:28:17 8   A.   THAT'S RIGHT.

03:28:18 9   Q.   AND YOU WERE INFORMED ABOUT CISCO'S ASSERTIONS OF

03:28:23 10   COPYRIGHT INFRINGEMENT?

03:28:23 11   A.   YES, I WAS.

03:28:25 12   Q.   AND CAN YOU TELL US, GENERALLY, WHAT WERE YOU ASKED TO

03:28:28 13   ANALYZE FOR THIS CASE?

03:28:30 14   A.   SURE. SO THERE ARE TWO MAIN THINGS I WAS ASKED TO DO.

03:28:34 15   ONE WAS TO LOOK AT CISCO'S ASSERTED ELEMENTS AND DETERMINE

03:28:39 16   THEIR ORIGINALITY AND TO WHAT EXTENT THEY HAVE BEEN USED ACROSS

03:28:42 17   THE INDUSTRY.

03:28:43 18   AND THEN THE SECOND ASSIGNMENT WAS TO LOOK AT THIS IDEA

03:28:46 19   CALLED FAIR USE, WHICH IS A LEGAL CONCEPT, AND IT'S GOT FOUR

03:28:51 20   FACTORS, AND I WAS TO CONSIDER THOSE FOUR FACTORS IN PERFORMING

03:28:57 21   AN ANALYSIS.

03:28:57 22   Q.   AND WE ARE GOING TO GO THROUGH YOUR ANALYSIS IN DETAIL

03:29:00 23   THIS AFTERNOON, BUT BEFORE WE GO THERE, CAN YOU SUMMARIZE WHAT

03:29:05 24   CONCLUSIONS YOU REACHED FROM YOUR ANALYSIS?

03:29:09 25   A.   SURE.

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03:29:10 1   SO ON THE FIRST QUESTION, I LOOKED CAREFULLY AT CISCO'S

03:29:14 2   ASSERTED ELEMENTS IN ITS CLI. AND I FOUND THAT THE MAJORITY OF

03:29:19 3   THOSE ELEMENTS EXISTED IN LEGACY OPERATING SYSTEMS OR OLDER

03:29:25 4   CLI'S OR THEY WERE TAKEN STRAIGHT OUT OF THESE INDUSTRY

03:29:30 5   STANDARD DOCUMENTS PRODUCED BY THE IEEE OR THE ITEF.

03:29:34 6   AND TO THE EXTENT THAT CISCO HAD OPTIONS, CHOICES IT COULD

03:29:38 7   MAKE ABOUT WHAT TERMS IT CHOSE, THOSE OPTIONS WERE USUALLY FROM

03:29:43 8   A VERY SMALL SET OF CHOICES.

03:29:46 9   ON THE WIDESPREAD ANALYSIS QUESTION, I LOOKED AT A WIDE

03:29:50 10   VARIETY OF VENDORS, COMPANIES YOU'VE PROBABLY HEARD OF LIKE

03:29:54 11   BROCADE, IBM, JUNIPER, DELL AND SO FORTH, AND I FOUND THAT

03:29:58 12   HUNDREDS OF THE ASSERTED COMMANDS WERE FOUND IN THESE OTHER

03:30:05 13   VENDORS PRODUCTS, SOMETIMES 10, 15 OR MORE IN THE COMMONLY USED

03:30:10 14   COMMANDS.

03:30:11 15   AND THEN ON THE FAIR USE QUESTION, I CONSIDERED THOSE FOUR

03:30:14 16   FACTORS I JUST TALKED ABOUT A MINUTE AGO, AND I DETERMINED THAT

03:30:17 17   ARISTA USED A SMALL PORTION OF CISCO'S COMMAND-LINE INTERFACE,

03:30:20 18   WHICH IS A FACTUAL, FUNCTIONAL OBJECT, AND IT DID SO IN A

03:30:25 19   HIGHLY TRANSFORMATIVE WAY.

03:30:27 20   ARISTA ADDED THOUSANDS MORE COMMANDS, IT DEVELOPED NEW

03:30:32 21   HARDWARE, IT DEVELOPED A NEW OPERATING SYSTEM CALLED EOS, AND

03:30:36 22   IT USHERED IN A NEW PARADIGM.

03:30:39 23   AND MY OPINION, THEREFORE, IS THAT THIS AN ANNOUNCES AND

03:30:42 24   SUPPORTS AND FINDING THAT ARISTA'S USE IS A FAIR USE.

03:30:45 25   Q.   OKAY. THANK YOU.

03:30:48 1   CAN YOU DESCRIBE FOR THE JURY THE SORT OF MATERIALS THAT

03:30:54 2   YOU REVIEWED IN ORDER TO CONDUCT THIS ANALYSIS?

03:30:58 3   A.   THERE WAS A LOT.

03:30:59 4   SO WE HAD ALL OF THE DISCLOSED MATERIALS, LOTS OF USER

03:31:03 5   MANUALS, DEPOSITIONS OF WITNESSES, SOURCE CODE FROM ARISTA,

03:31:08 6   FROM CISCO, FROM STANFORD, SOURCE CODE I WROTE MYSELF. I DID

03:31:12 7   SOME ADDITIONAL RESEARCH, AND I CONSIDERED ALL OF THAT IN

03:31:15 8   FORMULATING MY OPINIONS.

03:31:17 9   Q.   DID YOU -- WERE YOU ABLE TO USE THE SWITCHES FROM EITHER

03:31:23 10   CISCO OR ARISTA IN YOUR ANALYSIS?

03:31:25 11   A.   YEAH, I HAVE ONE OF EACH IN MY LIVING ROOM RIGHT NOW.

03:31:28 12   Q.   OKAY. AND APPROXIMATELY HOW MANY HOURS, IN TOTAL, DID YOU

03:31:32 13   SPEND ON THE ANALYSIS TO REACH THE OPINIONS YOU ARE PREPARED TO

03:31:36 14   GIVE TODAY?

03:31:36 15   A.   LAST TIME I LOOKED, IT WAS OVER A THOUSAND HOURS.

03:31:43 16   Q.   SO LET'S TURN TO THE CLI COMMANDS THAT ARE ASSERTED IN THE

03:31:49 17   CASE.

03:31:51 18   AND THE JURY HAS HEARD A LOT ABOUT THESE, BUT IF YOU COULD

03:31:55 19   GO BACK TO SORT OF THE FIRST BASE, IF YOU WILL, ON IT. AND

03:32:01 20   TELL US WHAT DOES A CLI COMMAND DO?

03:32:04 21   A.   I MEAN, A CLI IS THE MOST BASIC FORM OF COMPUTER

03:32:08 22   INTERFACE. YOU TYPE IN A COMMAND, YOU HIT ENTER OR RETURN, AND

03:32:12 23   SOMETIMES IT JUST DOES IT AND DOESN'T SAYING ANY, IT JUST GIVES

03:32:15 24   YOU ANOTHER PROMPT.

03:32:16 25   SOME COMMANDS EMIT A RESPONSE, AN OUTPUT ON THE SCREEN,

03:32:20 1   AND IT SCROLLS UP AND YOU READ THAT OUTPUT.

03:32:23 2   Q.   HAVE YOU EVER USED AN ANALOGY TO REFER TO A CLI COMMAND?

03:32:28 3   A.   SURE.

03:32:29 4   SO I MEAN, WE COMMONLY REFER TO THESE THINGS AS KNOBS.

03:32:32 5   AND THE REASON IS BECAUSE IT'S ANALOGOUS TO AN OLD STYLE STEREO

03:32:36 6   WHERE YOU'VE GOT ON-OFF BUTTON AND VOLUME AND TUNER KNOBS AND

03:32:42 7   SO FORTH.

03:32:42 8   IN ESSENCE, WHEN YOU ARE USING THE CLI, YOU ARE PUSHING

03:32:45 9   BUTTONS AND TURNING KNOBS. PERHAPS SOME PEOPLE CALL THE MORE

03:32:50 10   OBSCURE FEATURES "NERD KNOBS."

03:32:53 11   Q.   AND I THINK YOU HAVE SOME PHOTOS PREPARED TO SHOW THE JURY

03:32:56 12   ABOUT HISTORICAL COMMANDS AND USE OF COMMAND LINE; IS THAT

03:33:01 13   RIGHT?

03:33:01 14   A.   RIGHT, YEAH.

03:33:02 15   Q.   OKAY. CAN YOU EXPLAIN WHAT IS SHOWN HERE, DR. BLACK?

03:33:10 16   A.   SURE, THIS IS A PDP10. THIS WAS MADE BY DIGITAL EQUIPMENT

03:33:17 17   CORPORATION. THIS IS LIKE A SMARTPHONE IN YOUR POCKETS, A

03:33:19 18   THOUSAND TIMES FASTER.

03:33:20 19   THIS IS THE KIND OF MACHINE THAT I TOOK THE BUS UP TO THE

03:33:23 20   LAWRENCE HALL OF SCIENCE AND USED. AND WHEN YOU USED THIS

03:33:26 21   MACHINE, YOU DIDN'T SIT IN FRONT OF IT, YOU SAT IN FRONT OF A

03:33:30 22   TELETYPE, WHICH IS ACTUALLY -- ON THE NEXT SLIDE -- WHICH IS

03:33:32 23   ACTUALLY A PRINTER AND A KEYBOARD.

03:33:34 24   AND YOU TYPE YOUR CLI COMMAND IN AND IT WOULD CHUG AWAY

03:33:37 25   AND EMIT THE OUTPUT ON PAPER AND SCROLL UP. AND THE COOL THING

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03:33:40 1   IS YOU COULD TAKE IT HOME WITH YOU, WHICH YOU CAN'T DO WITH THE

03:33:43 2   VIDEO SCREEN. SO THAT WAS A LOT OF FUN, PRINT OUT SNOOPY AND

03:33:47 3   PUT HIM ON YOUR WALL.

03:33:48 4   AFTER THAT, I GOT MY FIRST TASTE OF MY OWN PERSONAL

03:33:52 5   COMPUTER, RADIO SHACK, AROUND 1976, CAME OUT WITH A COMPUTER

03:33:58 6   YOU COULD BUY FOR A FEW HUNDRED DOLLARS AND TAKE HOME.

03:34:01 7   MY DAD STARTED SELLING THESE IN HIS BUSINESS AND I WOULD

03:34:04 8   WRITE SOFTWARE FOR THEM.

03:34:06 9   SHORTLY AFTER THAT, THE FIRST PORTABLE COMPUTER CAME OUT,

03:34:10 10   THIS THING WEIGHED 25 POUNDS, SO WHETHER IT'S PORTABLE OR NOT,

03:34:15 11   I GUESS, DEPENDS ON YOUR ATTITUDE.

03:34:17 12   THE THING IN THE MIDDLE IS ACTUALLY THE SCREEN. THIS USED

03:34:20 13   AN OPERATING SYSTEM CALLED CP/M WHICH ALSO HAD A COMMAND-LINE

03:34:25 14   INTERFACE. AND WE SOLD THESE FOR A WHILE, AND I LEARNED TO

03:34:27 15   PROGRAM THESE THINGS AND HOW TO CONNECT THEM TOGETHER WITH

03:34:30 16   NETWORKS. CP/M.

03:34:34 17   THEN MAYBE SOME PEOPLE ACTUALLY REMEMBER THIS NOW, THIS IS

03:34:36 18   THE EARLY 80'S, THE IBM PC CAME OUT. IT HAD A CLI CALLED

03:34:41 19   MS-DOS WHICH IS STILL KIND OF IN USE HERE AND THERE.

03:34:46 20   AND THIS EVENTUALLY EVOLVED INTO WHAT IS MICROSOFT WINDOWS

03:34:49 21   THESE DAYS. AND WE SOLD THESE AS WELL IN MY BUSINESS.

03:34:54 22   THE NEXT SLIDE IS SHOWING TOPS 20 THAT'S BEEN TALKED ABOUT

03:34:56 23   A BUNCH. I ACTUALLY NEVER USED IT IN THIS TIMEFRAME. TOPS 20

03:35:00 24   IS ANOTHER CLI THAT WAS CREATED BY DEC, DIGITAL EQUIPMENT

03:35:03 25   CORPORATION.

03:35:04 1   AFTER THAT, I WENT TO HAYWARD. STARTED MY UNDER GRAD.

03:35:08 2   HERE WE USED UNIX. I THINK UNIX HAS BEEN MENTIONED A FEW TIMES

03:35:13 3   DURING THE TRIAL. THIS IS A CLI ALSO.

03:35:15 4   AND THEN FINALLY -- OH, NOT FINALLY. RIGHT AROUND, I

03:35:22 5   GUESS THIS IS ABOUT 1985, '88, CLI'S WERE PRETTY MUCH HOW YOU

03:35:29 6   USED COMPUTERS BACK THEN. GUI'S DIDN'T REALLY BECOME PREVALENT

03:35:33 7   AND UBIQUITOUS UNTIL A FEW YEARS OR A DECADE LATER.

03:35:37 8   Q.   OKAY. DR. BLACK, TURNING TO THE ASSERTED CLI ELEMENTS IN

03:35:41 9   THIS CASE, DID YOU ANALYZE THOSE ELEMENTS TO ATTEMPT TO

03:35:47 10   DETERMINE WHERE THEY MIGHT HAVE ORIGINATED?

03:35:50 11   A.   YEAH, I DID.

03:35:51 12   Q.   AND WHAT DID YOU CONCLUDE?

03:35:54 13   A.   WELL, I OUTLINED THIS EARLIER THAT THERE WERE VARIOUS

03:35:57 14   SOURCES FOR WHERE THE EARLY CISCO ENGINEERS WOULD COULD HAVE

03:36:03 15   TAKEN THEM -- ACTUALLY, WOULD IT BE OKAY IF --

03:36:06 16   MR. FERRALL: IF YOUR HONOR WOULD PERMIT DR. BLACK

03:36:08 17   TO --

03:36:09 18   THE COURT: YES, JUST KEEP YOUR VOICE UP SO WE CAN

03:36:12 19   HEAR YOU.

03:36:12 20   THE WITNESS: I WILL. I WILL TRY.

03:36:24 21   SO BROADLY TAKEN, THERE ARE BASICALLY THREE DIFFERENT

03:36:27 22   PLACES YOU MIGHT TAKE COMMAND TERMS THAT EXISTED BEFORE CISCO

03:36:32 23   WAS FOUNDED.

03:36:34 24   ONE WOULD BE LEGACY CLI'S, THESE ONES THAT WE JUST LOOKED

03:36:39 25   AT A MOMENT AGO. AND THESE WERE FULL OF TERMS, OF COURSE. AND

03:36:48   1   I'M GOING TO USE DIFFERENT COLORS FOR A REASON HERE.

03:36:51   2   AND THEN THERE WERE JUST TERMS THAT PEOPLE IN THE

03:36:53   3   NETWORKING INDUSTRY ALREADY KNEW, WORDS LIKE NETWORK, HOST,

03:36:57   4   INTERFACE, COUNTERS, TIME OUT, THAT KIND OF THING.

03:37:00   5   SO I WOULD CALL THESE COMMON NETWORKING TERMS.

03:37:10   6   AND THEN THE FINAL CATEGORY IS THIS BODY OF PROTOCOL NAMES

03:37:15   7   AND THE TERMS INSIDE THE PROTOCOL SPECIFICATIONS THAT CAME OUT

03:37:20   8   OF PRIMARILY THE ITEF AND THE IEEE. SO I WILL CALL THOSE

03:37:27   9   INDUSTRY STANDARD TERMS.

03:37:30   10   AND THESE ARE THINGS LIKE BGP AND OSPF AND IP AND TCP.

03:37:39   11   AND THE MAJORITY OF THE TERMS USED IN CISCO'S CLI FROM COME

03:37:43   12   THESE THREE SOURCES.

03:37:45   13   MR. FERRALL: THANK YOU.

03:37:49   14   Q.   NOW DR. BLACK, WERE YOU AWARE OF ANY EVIDENCE FROM THE

03:38:06   15   CASE, FROM DEPOSITIONS OR OTHER DISCOVERY EXCHANGED IN THE

03:38:11   16   CASE, THAT SUPPORTED YOUR IDEA THAT SOME OF THESE CLI COMMANDS

03:38:16   17   CAME FROM PRIOR OPERATING SYSTEMS?

03:38:19   18   A.   CERTAINLY. I MEAN, I THINK MR. LOUGHEED TESTIFIED LAST

03:38:23   19   WEEK THAT HE HAD EXPERIENCE WITH TOPS 20 AND THAT HE WAS

03:38:28   20   INSPIRED BY SOME OF THE ELEMENTS IN TOPS 20 WHEN HE WROTE THE

03:38:32   21   FIRST VERSION OF CISCO'S IOS.

03:38:35   22   WE'VE ALSO -- WELL, MAYBE WE HAVEN'T, BUT I'VE READ

03:38:38   23   DEPOSITION TESTIMONY FROM CISCO EMPLOYEES WHO CREATED SOME OF

03:38:42   24   THE COMMANDS THAT ARE AT ISSUE IN THIS CASE, AND THEY SAID, FOR

03:38:45   25   EXAMPLE, WHEN THE PERSON, I THINK HER NAME WAS TONG LIU, WROTE

03:38:50 1   THE PTP COMMANDS, THAT'S PRECISION TIME PROTOCOL, THAT SHE

03:38:54 2   LOOKED TO THE RFC THAT -- OR IN THAT CASE THE IEEE DOCUMENT

03:38:58 3   THAT SPECIFIED WHAT'S THE NAME OF THE PROTOCOL, WHAT ARE THE

03:39:02 4   NAMES OF THE TERMS. AND SHE INDUCTED THOSE, BROUGHT THOSE INTO

03:39:07 5   THE CISCO CLI, AND THERE'S LOTS OF TESTIMONY ALONG THOSE LINES.

03:39:10 6   Q.   ALL RIGHT. IF WE COULD TURN TO EXHIBIT 6581 IN YOUR

03:39:15 7   BINDER, THERE'S SOME BINDERS UP THERE.

03:39:21 8   A.   UP HERE?

03:39:22 9   Q.   YES.

03:39:23 10   A.   I'M SORRY, 6581?

03:39:25 11   Q.   THEY SHOULD BE LABELED ON THE BINDER EDGE THERE.

03:39:31 12   A.   I'M WITH YOU. OKAY.

03:39:41 13   Q.   DO YOU RECOGNIZE 6581?

03:39:45 14   A.   YEAH. I'VE SEEN IT BEFORE.

03:39:46 15   Q.   WHAT IS THIS?

03:39:47 16   A.   THIS IS A MANUAL FOR WHAT'S CALLED DECK NET.

03:39:53 17   Q.   IS THIS ONE OF THE MANUALS YOU REVIEWED TO DETERMINE

03:39:55 18   POSSIBLE ORIGINS OF THE ASSERTED CLI COMMANDS?

03:39:58 19   A.   YES, IT IS.

03:39:59 20   Q.   ALL RIGHT.

03:40:00 21   MR. FERRALL: YOUR HONOR, I MOVE 6581 INTO EVIDENCE.

03:40:03 22   MR. NELSON: NO OBJECTION YOUR HONOR.

03:40:04 23   THE COURT: IT WILL BE ADMITTED.

03:40:13 24   (DEFENDANT'S EXHIBIT 6581 WAS ADMITTED INTO EVIDENCE.)

03:40:13 25   BY MR. PAK:

03:40:14   1   Q.   DO YOU RECALL, DR. BLACK, THE APPROXIMATE VINTAGE, WHEN

03:40:16   2   THIS MANUAL CAME OUT?

03:40:18   3   A.   IT'S 1980.

03:40:20   4   Q.   AND DEC IS DIGITAL EQUIPMENT CORPORATION; IS THAT RIGHT?

03:40:22   5   A.   THAT'S RIGHT.

03:40:24   6   Q.   IF WE COULD GO TO PAGE 35 OF THIS MANUAL, PLEASE.

03:40:33   7   A.   I'M THERE.

03:40:35   8   Q.   CAN YOU EXPLAIN TO THE JURY WHAT YOU FOUND HERE THAT'S

03:40:41   9   RELATED TO THE ASSERTED CLI COMMANDS?

03:40:44   10   A.   SURE.

03:40:44   11   SO THIS MANUAL IS A REFERENCE MANUAL THAT GIVES LOTS OF

03:40:48   12   DIFFERENT CLI COMMANDS. AND HERE YOU CAN SEE THAT THERE IS A

03:40:52   13   COMMAND CALLED "SHOW," RIGHT AROUND THE MIDDLE OF THE PAGE

03:40:57   14   THERE.

03:40:58   15   AND THAT "SHOW" HAS VARIOUS OTHER WORDS, COMMAND WORDS

03:41:00   16   THAT CAN FOLLOW IT. I THINK IT'S CODED AS "ENTITY" HERE, THEN

03:41:06   17   THE ENTITIES ARE LISTED BELOW THAT AS ACTIVE LINES, ACTIVE

03:41:10   18   LOGGING AND SO FORTH.

03:41:11   19   Q.   AND HOW, IF AT ALL, DID THAT RELATE TO THE ASSERTED CLI

03:41:15   20   COMMANDS IN THIS CASE?

03:41:17   21   A.   SO THERE ARE 506 TOTAL ASSERTED COMMANDS, I THINK IN THE

03:41:24   22   NEIGHBORHOOD OF 150 OF THEM FOLLOW THE SAME SORT OF PATTERN.

03:41:27   23   THEY START WITH THE WORD "SHOW," THEN THEY NAME SOMETHING

03:41:31   24   TO BE SHOWN RIGHT AFTER THAT.

03:41:33   25   Q.   AND ARE YOU FAMILIAR WITH ANOTHER OPERATING SYSTEM CALLED

03:41:39 1   QPR?

03:41:40 2   A.   I THINK IT'S OPR.

03:41:41 3   Q.   OPR, SORRY.

03:41:43 4   A.   I'VE NEVER PERSONALLY USED IT. IT WAS THE CLI THAT

03:41:46 5   MR. LOUGHEED TESTIFIED THAT HE HAD USED AS PART OF THE QUASAR

03:41:50 6   PRINT SYSTEM, AND HE TESTIFIED THAT THERE WAS A SHOW COMMAND

03:41:54 7   THERE AS WELL.

03:41:55 8   Q.   THAT WAS WHAT MR. LOUGHEED USED BEFORE HE JOINED CISCO?

03:42:00 9   A.   MY UNDERSTANDING WAS THAT WAS AT STANFORD, YES.

03:42:03 10   Q.   NOW HAVE YOU LOOKED AT OTHER MANUALS IN ADDITION TO THIS

03:42:10 11   DEC NET MANUAL?

03:42:11 12   A.   YEAH, I LOOKED AT A NUMBER OF OTHER MANUALS, ONE FOR RSX

03:42:17 13   11 AND ANOTHER ONE FOR VMS AND MANUALS IN THIS TIMEFRAME.

03:42:23 14   Q.   DID YOU LOOK AT ANYTHING FOR TOPS 20?

03:42:26 15   A.   YEAH. THERE'S A TOPS 20 MANUAL I LOOKED AT, THAT I THINK

03:42:29 16   IS AROUND HERE.

03:42:30 17   Q.   OKAY. WELL, WHAT I WOULD LIKE TO DO IS, IF POSSIBLE, SHOW

03:42:35 18   NOW A SUMMARY OF THE FINDINGS THAT YOU GATHERED FROM YOUR

03:42:41 19   REVIEW OF PRIOR OPERATING SYSTEMS?

03:42:43 20   A.   SURE.

03:42:43 21   Q.   OKAY. IF WE COULD PULL UP SLIDE 11.

03:42:50 22   CAN YOU EXPLAIN WHAT THIS IS?

03:42:51 23   A.   SURE.

03:42:52 24   SO CORRESPONDING TO THAT BROWN BUBBLE ON MY AMAZING

03:42:58 25   DRAWING OVER THERE, THESE ARE WORDS THAT I FOUND IN MANUALS

03:43:02 1   FROM LEGACY CLI'S, CLI PRODUCTS THAT PRE-DATE CISCO, AND THAT

03:43:07 2   ARE AMONG THE TERMS USED BY CISCO'S CLI IN THE ASSERTED

03:43:12 3   COMMANDS.

03:43:13 4   Q.   AND I THINK YOU SAID THAT THERE'S OVER 150 "SHOW"

03:43:18 5   COMMANDS.   WHAT ABOUT "CLEAR," DO YOU REMEMBER HOW MANY OF THE

03:43:21 6   ASSERTED COMMANDS IN THIS CASE USE "CLEAR?"

03:43:27 7   A.   NOT A FAN, IT WAS FAR FEWER, MAYBE 10 OR 20.

03:43:36 8   Q.   NOW DID YOU PERFORM A SIMILAR ANALYSIS REGARDING THE

03:43:39 9   ASSERTED MODES IN THE CASE?

03:43:41 10   A.   YEAH.   SO JUST TO REMIND EVERYONE, THE MODES ARE THESE

03:43:50 11   THINGS THAT ARE NAMED LIKE USER, EXEC, PRIVILEGED EXEC, CONFIG,

03:43:56 12   INTERFACE CONFIG, AND THEY COME WITH PROMPTS IN THE ANGLED

03:44:00 13   BRACKETS, AND THE POUND.

03:44:01 14   Q.   AND WE HAVE A SLIDE THAT SUMMARIZES YOUR FINDINGS WITH

03:44:04 15   RESPECT TO MODES?

03:44:05 16   A.   WE DO.

03:44:05 17   Q.   AND LET'S PUT THAT UP.

03:44:07 18   BUT BEFORE WE TALK ABOUT IT, LET ME ASK YOU, WHERE DID YOU

03:44:10 19   FIND YOUR BASIS FOR YOUR OPINION REGARDING THE PRESENCE OF

03:44:15 20   THESE MODES IN PRIOR OPERATING SYSTEMS?

03:44:17 21   A.   I MEAN, ONCE AGAIN, I AM FAMILIAR WITH THESE OLD CLI'S, I

03:44:21 22   USED THEM PERSONALLY, BUT I ALSO LOOKED IN THE MANUALS THAT WE

03:44:26 23   TALKED ABOUT.

03:44:26 24   Q.   OKAY. LET'S PULL UP SLIDE 14, PLEASE.

03:44:31 25   CAN YOU EXPLAIN WHAT IS SHOWING HERE.

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)

03:44:34 1   A.   SURE.

03:44:35 2   SO THE CLI IN TOPS 20 IS CALLED EXEC. AND CISCO'S BASIC

03:44:40 3   LOWEST LEVEL MODE IS CALLED USER EXEC. AND MR. LOUGHEED HAS

03:44:44 4   TESTIFIED THAT HE WAS INSPIRED BY THAT WHEN HE CREATED CISCO'S

03:44:48 5   PRODUCT. THE PRIVILEGED MODES, THE IDEA OF HAVING A PRIVILEGED

03:44:52 6   MODE WHERE YOU GET SUPER POWERS, ELEVATED PRIVILEGES, THAT WAS

03:44:57 7   IN TOPS 20, IT'S ALSO A CONCEPT IN UNIX WHICH IS STILL AROUND

03:45:01 8   AND STILL HAS THAT CONCEPT.

03:45:02 9   THE ANGLE BRACKET PROMPT THAT'S USED IN CISCO'S

03:45:06 10   UNPRIVILEGED MODE, THAT WAS IN CP/M, USED IN CP/M AND IT IS

03:45:12 11   USED IN MS-DOS, STILL TO THIS DAY.

03:45:14 12   THEN THE PRIVILEGED MODE PROMPT IS THIS HASH MARK, POUND

03:45:19 13   SIGN, AND THAT WAS IN UNIX SINCE THE 60'S.

03:45:22 14   Q.   ALL RIGHT. I NEGLECTED TO ASK YOU TO -- I WOULD LIKE TO

03:45:30 15   GO BACK TO SLIDE 11 BECAUSE I JUST WANT TO MAKE SURE THE RECORD

03:45:33 16   IS CLEAR.

03:45:41 17   CAN YOU JUST READ INTO THE RECORD, DR. BLACK, THE TERMS

03:45:44 18   THAT YOU FOUND FROM PRIOR OPERATING SYSTEMS?

03:45:45 19   A.   YOU WANT ME TO READ EVERYTHING ON THE SLIDE?

03:45:47 20   Q.   PLEASE.

03:45:48 21   A.   BANNER, BOOT, CLEAR, CLOCK, ENABLE, ERASE, LENGTH, LOAD,

03:45:53 22   MOTD, NO, SET, SHOW, AND TERMINAL.

03:46:06 23   Q.   THANK YOU.

03:46:08 24   NOW LET'S TURN TO YOUR SECOND CIRCLE, THE BLUE CIRCLE,

03:46:12 25   COMMON NETWORKING TERMS.

03:46:14 1   A.   OKAY.

03:46:15 2   Q.   WHAT DID YOU DO TO REACH A CONCLUSION ABOUT THE COMMON

03:46:18 3   PRESENCE OF NETWORKING TERMS?

03:46:19 4   A.   THAT WAS MORE OF A JUDGMENT CALL. AND, YOU KNOW, IF I

03:46:24 5   BELIEVE THAT I HEARD PEOPLE SAY IT AND USE IT AND IT'S PART OF

03:46:28 6   THE LEXICON, THINGS LIKE "HOST" AND "NETWORK" AND "INTERFACES,"

03:46:31 7   THEN I COLORED IT BLUE OR I DEEMED IT TO BE IN THE BLUE CIRCLE.

03:46:37 8   Q.   ALL RIGHT. AND I THINK WE HAVE A SLIDE OF THE TERMS THAT

03:46:40 9   YOU CONCLUDED WERE COMMON NETWORKING TERMS. IF WE COULD PULL

03:46:44 10   UP SLIDE 17.

03:46:54 11   IT'S A LITTLE BIT HARD TO SEE. BUT APPROXIMATELY HOW MANY

03:46:58 12   TERMS HERE DID YOU CONCLUDE WERE COMMON NETWORKING TERMS?

03:47:02 13   A.   IT LOOKS LIKE MAYBE 70 OR 80.

03:47:10 14   Q.   AND DID YOU SEE ANY EVIDENCE IN THE RECORD, AGAIN FROM

03:47:14 15   DISCOVERY, ABOUT HOW COMMON NETWORKING TERMS WERE ACTUALLY USED

03:47:17 16   BY CISCO ENGINEERS IN DEVISING CLI COMMANDS?

03:47:22 17   A.   YEAH. I MEAN, THE ENGINEERS TESTIFIED THAT THEY WANTED TO

03:47:26 18   USE TERMS THAT WERE FAMILIAR TO THEIR USERS, AND THEIR USERS

03:47:29 19   ARE NETWORK ENGINEERS.

03:47:30 20   AND SO SOME OF THESE TERMS MIGHT LOOK PRETTY CRAZY LIKE

03:47:34 21   THAT'S NOT A COMMON TERM, BUT THINGS LIKE, I DON'T KNOW, REGEX,

03:47:41 22   WHICH APPEARS IN THE LIST HERE, IT LOOKS LIKE IT'S GREEK, BUT

03:47:43 23   IT'S ACTUALLY A COMMON TERM USED THROUGHOUT COMPUTER SCIENCE.

03:47:48 24   IT MEANS REGULAR EXPRESSION.

03:47:50 25   WHEN YOU GO TO SCHOOL AND YOU TAKE ONE OF MY CLASSES, OR

03:47:52 1   SOME OF MY CLASSES, YOU LEARN WHAT THAT MEANS.

03:47:55 2   Q.   AND OTHERS, I SUPPOSE, ARE LESS CONTROVERSIAL LIKE "LOGIN"

03:47:59 3   OR "LINK;" IS THAT FAIR?

03:48:01 4   A.   YEAH.   I MEAN SOME OF THEM ARE LIKE "RUN" OR "OUT" OR

03:48:05 5   "USERS," OR "IN," THOSE, I THINK, ARE CLEARLY IN COMMON USE.

03:48:14 6   Q.   OKAY.   I'M NOT GOING TO ASK YOU TO READ ALL OF THESE INTO

03:48:18 7   THE RECORD.

03:48:18 8   A.   THANK YOU.

03:48:19 9   Q.   NOW YOUR THIRD CATEGORY IN GREEN WAS INDUSTRY STANDARD

03:48:22 10   TERMS.

03:48:22 11   CAN YOU EXPLAIN WHAT YOU DID TO ANALYZE THE EXTENT TO

03:48:27 12   WHICH THE ASSERTED CLI ELEMENTS USED INDUSTRY STANDARD TERMS?

03:48:31 13   A.   SURE.

03:48:33 14   SO I MEAN, I RECOGNIZED -- IF YOU LOOK AT THIS LIST OF 506

03:48:37 15   COMMANDS, A LOT OF THEM ARE NAMING PROTOCOLS AND NAMING TERMS

03:48:43 16   WITHIN THOSE PROTOCOLS WHICH I IMMEDIATELY RECOGNIZED BECAUSE I

03:48:46 17   READ A LOT OF THESE STANDARDS PRIOR TO MY ENGAGEMENT IN THE

03:48:49 18   CASE.

03:48:50 19   BUT IN ORDER TO CONDUCT BY ANALYSIS, I WENT TO THE

03:48:52 20   SPECIFICATIONS FOR THOSE PROTOCOLS.   AND IN THE ITEF, IT'S

03:48:55 21   CALLED AN RFC, WE'VE HEARD ABOUT THAT A BUNCH.   IN THE IEEE,

03:49:00 22   THE SPEC STARTED WITH 802.SOMETHING.

03:49:04 23   SO I LOOKED AT THOSE SPECIFICATIONS TO FIND TERMS THAT LAY

03:49:08 24   WITHIN THEM.

03:49:08 25   Q.   AND CAN YOU TELL ME, IN GENERAL, WE WILL GET INTO SOME

03:49:12   1   SPECIFICS, BUT IN GENERAL, WHAT DID YOU FIND?

03:49:16   2   A.   I FOUND FOR THE VAST MAJORITY OF TERMS IN THE ACCUSED CLI

03:49:21   3   COMMAND, THEY COULD BE FOUND IN THE TITLE AND IN THE CONTENTS

03:49:25   4   OF THE INDUSTRY STANDARD SPECIFICATIONS.

03:49:28   5   Q.   ALL RIGHT. NOW I WOULD LIKE TO PULL UP SLIDE 19, PLEASE.

03:49:39   6   WHAT DO YOU UNDERSTAND THIS TO BE, DR. BLACK?

03:49:42   7   A.   THESE ARE SOME DOT1X COMMANDS. SO THIS IS IEEE. AND AS I

03:49:49   8   JUST SAID THEY START WITH 802. SO THIS IS WRITTEN 802 DOT1X

03:49:54   9   BUT PEOPLE CALL IT DOT1X FOR SHORT. AND THIS IS ACTUALLY A

03:49:59 10   SECURITY PROTOCOL. THE THIRD ONE DOWN HERE WHICH IS DOT1X

03:50:03 11   SYSTEM AUTH CONTROL. THAT TURNS ON THE FEATURE. SO THAT'S

03:50:06 12   LIKE A BUTTON, YOU TYPE IT IN AND THAT IT TURNS IT ON.

03:50:11 13   AND THEN THE SECOND ONE, DOT1X RE-AUTHENTICATION FEATURE,

03:50:16 14   THAT TURNS ON THE RE-AUTHENTICATION FEATURE, LIKE ANOTHER

03:50:18 15   BUTTON.

03:50:19 16   AND THEN THE BOTTOM THREE ARE LIKE KNOBS, YOU SET AN

03:50:22 17   INTERVAL AND A NUMBER OF SECONDS THAT YOU WANT THE CERTAIN

03:50:24 18   FEATURE TO BE INVOKED.

03:50:25 19   Q.   AND ARE ALL OF THESE ASSERTED COMMANDS IN THE CASE?

03:50:28 20   A.   I BELIEVE ALL SIX ARE, YES.

03:50:30 21   Q.   ALL RIGHT. AND IS THERE A SPECIFICATION FOR DOT1X?

03:50:36 22   A.   YES, IT'S THE 802 DOT1X SPECIFICATION.

03:50:41 23   Q.   APTLY NAMED. IF YOU COULD LOOK AT 6801 IN YOUR BINDER.

03:51:02 24   A.   I HAVE IT.

03:51:02 25   Q.   IS THAT THE 802 DOT1X SPECIFICATION, AT LEAST AS OF 2001?

03:51:08   1   A.   YES IT IS.

03:51:09   2   MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 6801

03:51:11   3   IN EVIDENCE.

03:51:12   4   MR. NELSON: NO OBJECTION.

03:51:13   5   THE COURT: IT WILL BE ADMITTED.

03:51:14   6   (DEFENDANT'S EXHIBIT 6801 WAS ADMITTED INTO EVIDENCE.)

03:51:14   7   BY MR. FERRALL:

03:51:44   8   Q.   SO DR. BLACK, IF WE GO TO I THINK THE PAGE ENDING 593 IN

03:51:53   9   THE EXHIBIT 6801?

03:51:56 10   A.   I SEE IT.

03:51:57 11   Q.   ALL RIGHT.   CAN YOU TELL US WHAT YOU FOUND HERE REGARDING

03:52:03 12   THE FIRST CLI COMMAND IN THIS LIST?

03:52:05 13   A.   YEAH.   SO I MEAN, PAE MEANS PORT ACCESS ENTITY.   YOU CAN

03:52:10 14   SEE THAT ACRONYM ON THE PAGE IN VARIOUS PLACES.   AND THEN ON

03:52:15 15   831 YOU SEE THE WORD AUTHENTICATOR, WHICH IS ALSO THE THIRD

03:52:19 16   TERM IN THE ASSERTED COMMAND.

03:52:21 17   Q.   IS AUTHENTICATOR A FUNCTION OR A FEATURE THAT IS EXPLAINED

03:52:26 18   IN THE 802 DOT1X STANDARD ITSELF?

03:52:31 19   A.   YEAH.   THERE ARE THREE ACTORS IN 8021X.   THERE'S THE

03:52:39 20   SUPPLICANT AUTHENTICATOR AND THE AUTHENTICATION SERVER, SO IT'S

03:52:41 21   THE MIDDLE OF THOSE THREE.

03:52:42 22   Q.   IS THE TERM "AUTHENTICATOR" IN THE CISCO CLI COMMAND, IS

03:52:47 23   THAT USED IN THE SAME WAY AS IT'S USED IN THE SPECIFICATION?

03:52:51 24   A.   YES, IT IS.

03:52:52 25   Q.   ALL RIGHT.   LET'S LOOK AT THE DOT1X RE-AUTHENTICATION

03:52:57 1   COMMAND, AND IF WE COULD GO TO PAGE ENDING IN 615.

03:53:11 2   DR. BLACK, CAN YOU TELL US WHAT'S ON THIS PAGE REGARDING

03:53:15 3   THE SECOND COMMAND HERE?

03:53:16 4   A.   YEAH. SO THAT ONE IS A LITTLE SIMPLER. IT SAYS

03:53:20 5   "RE-AUTHENTICATION" AND THERE'S A HEADING THAT TALKS ABOUT THAT

03:53:22 6   FEATURE, THE RE-AUTHENTICATION FEATURE, WHICH IS THE ONE THAT

03:53:25 7   SAYS I'VE GOT TO KEEP ASKING FOR YOUR PASSWORD, OVER, AND OVER,

03:53:29 8   AND OVER ON AN INTERVAL, THAT'S WHAT IT'S DOING.

03:53:32 9   Q.   IS THERE ANOTHER COMMAND YOU WOULD LIKE TO EXPLAIN TO THE

03:53:35 10   JURY, I WILL LET YOU PICK THE NEXT ONE.

03:53:38 11   A.   OH, GEEZ. YOU WANT ME TO JUST PICK FROM THE LIST HERE?

03:53:46 12   Q.   YEAH, WHICH ONE DO YOU WANT TO TALK ABOUT?

03:53:47 13   A.   TIMEOUT QUIET-PERIOD.

03:53:52 14   Q.   OKAY. SO I THINK THAT ONE -- LET'S GO TO PAGE 609.

03:54:07 15   MR. DAHM? OKAY. SORRY.

03:54:07 16   THE COURT: HE'S HAVING A TIME OUT QUIET PERIOD.

03:54:13 17   THE WITNESS: OKAY. SO THAT ONE WAS -- WHAT DID I

03:54:15 18   CHOOSE? TIME OUT QUIET PERIOD?

03:54:17 19   OKAY. IN THE MIDDLE OF THE PAGE THERE, THERE'S A HEADING

03:54:23 20   IT'S QUIET PERIOD, WHICH IS THE AMOUNT OF TIME TO WAIT BEFORE

03:54:26 21   NAGGING SOMEONE AGAIN.

03:54:28 22   AND IT'S SPELLED WITH DIFFERENT CAPITALIZATION AND THERE'S

03:54:31 23   NO HYPHEN, BUT IN THE CISCO VERSION THERE IS.

03:54:35 24   Q.   DOES CAPITALIZATION MATTER IN A PARSER, TO YOUR KNOWLEDGE?

03:54:39 25   A.   IT DEPENDS ON THE PARSER.

03:54:40   1   FOR CISCO AND ARISTA AND THE OTHER ONES I'VE USED, IT'S

03:54:45   2   CASE INSENSITIVE WHICH MEAN ITS DOESN'T MATTER IF IT'S UPPER OR

03:54:49   3   LOWER.   IN CERTAIN OTHER CONTEXT, IT CAN MATTER.

03:54:55   4   Q.   NOW DID YOU DO THIS SORT OF ANALYSIS FOR OTHER INDUSTRY

03:55:02   5   STANDARD PUBLICATIONS IN ADDITION TO DOT1X?

03:55:04   6   A.   YEAH, I LOOKED AT A LARGE NUMBER OF THEM, IN FACT.

03:55:07   7   Q.   DO YOU HAVE ANY ESTIMATE OF HOW MANY STANDARDS YOU LOOKED

03:55:10   8   AT?

03:55:10   9   A.   OH, WOW, 30 OR 40, MAYBE.

03:55:16   10   Q.   DID YOU LOOK AT A STANDARD FOR OSPF, FOR EXAMPLE?

03:55:22   11   A.   YES.

03:55:22   12   Q.   ALL RIGHT.   CAN YOU LOOK AT EXHIBIT 6817 IN YOUR BINDER.

03:55:31   13   A.   OKAY.

03:55:33   14   Q.   IS THAT THE OSPF STANDARD OR AT LEAST ONE OF THE RFC'S FOR

03:55:39   15   OSPF THAT YOU LOOKED AT FOR THIS ANALYSIS?

03:55:42   16   A.   IT'S ONE OF THEM, YES.

03:55:44   17   MR. FERRALL: YOUR HONOR, I WOULD LIKE TO MOVE

03:55:46   18   EXHIBIT 6817 INTO EVIDENCE.

03:55:47   19   MR. NELSON: BASED ON THAT DESCRIPTION, I'M FINE

03:55:49   20   YOUR HONOR.   I'M HAVING TROUBLE KEEPING UP, BUT I'M OKAY WITH

03:55:53   21   IT.

03:55:53   22   THE COURT: IT WILL BE ADMITTED.

03:55:55   23   (DEFENDANT'S EXHIBIT 6817 WAS ADMITTED INTO EVIDENCE.)

03:55:55   24   BY MR. FERRALL:

03:56:01   25   Q.   OKAY.   AND WE ARE NOT GOING TO BE ABLE TO GO THROUGH THIS,

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2106

03:56:04 1   MUCH TO THE JURY'S PLEASURE TO HEAR THAT WE ARE NOT GOING TO GO

03:56:08 2   THROUGH THIS FOR EVERY COMMAND, BUT SUFFICE IT TO SAY, DID YOU

03:56:12 3   PERFORM IN SIMILAR ANALYSIS FOR THE OSPF STANDARD AND OTHERS?

03:56:18 4   A.   I DID.

03:56:18 5   Q.   AND DID YOU PREPARE A SUMMARY OF THE NUMBER OF COMMANDS

03:56:21 6   THAT, THE NUMBER OF COMMAND TERMS THAT ARE ASSERTED IN THIS

03:56:26 7   CASE THAT CAME FROM ITEF PUBLICATIONS LIKE RFC'S?

03:56:31 8   A.   YES.

03:56:32 9   Q.   ALL RIGHT. AND IF WE COULD LOOK AT SLIDE 15.

03:56:40 10   A.   SO THIS IS THE ITEF VERSION, THESE ARE A SAMPLING OF THE

03:56:45 11   VARIOUS COMMAND TERMS. IN FACT, EVERY ONE OF THESE IS A

03:56:49 12   PROTOCOL.

03:56:49 13   AND SO THERE ARE, I DON'T KNOW, ABOUT 20 OR SO OF THOSE ON

03:56:52 14   THE SLIDE.

03:56:57 15   Q.   SO ARE THESE TERMS USED IN ASSERTED COMMANDS?

03:56:59 16   A.   I THINK, YEAH, EVERY ONE OF THEM IS.

03:57:01 17   Q.   SOMETIMES MULTIPLE TIMES?

03:57:03 18   A.   NOT WITHIN THE SAME COMMAND, BUT YEAH, IT MIGHT BE

03:57:06 19   MULTIPLE COMMANDS THAT USE A GIVEN TERM.

03:57:08 20   Q.   ALL RIGHT.

03:57:09 21   AND HOW ABOUT IEEE STANDARDS, DID YOU PREPARE A SUMMARY OF

03:57:13 22   WHAT YOU FOUND FROM IEEE STANDARDS?

03:57:15 23   A.   YES. I THINK IT'S THE NEXT SLIDE.

03:57:18 24   SO HERE, THESE AREN'T ALL PROTOCOLS, SOME OF THESE ARE

03:57:22 25   TERMS FROM WITHIN THE PROTOCOL DOCUMENT. BUT ALL OF THESE ARE

03:57:25 1   PART OF A STANDARD THAT WAS PUBLISHED BY THE IEEE WHICH

03:57:28 2   OPERATES OUTSIDE OF ANY COMPANY.

03:57:31 3   Q.   NOW AFTER YOU COMPLETED ALL OF THE -- THIS REVIEW, DID YOU

03:57:38 4   ATTEMPT TO PUT TOGETHER ALL OF YOUR FINDINGS INTO ONE PLACE?

03:57:42 5   A.   I DID AND IT WAS A LOT OF FUN.

03:57:46 6   Q.   OKAY. IF YOU COULD LOOK AT EXHIBIT 9042, PLEASE.

03:58:07 7   A.   WHERE WOULD I FIND IT?

03:58:09 8   THE COURT: IT'S THE LAST BINDER, NUMBER 8, IT'S THE

03:58:11 9   SKINNY ONE.

03:58:14 10   THE WITNESS: THANK YOU, YOUR HONOR.

03:58:19 11   OKAY. I'M WITH YOU.

03:58:22 12   Q.   WHAT'S 9042?

03:58:25 13   A.   THIS IS AN EXCEL SPREADSHEET WHERE I LISTED ALL 506 OF THE

03:58:32 14   ASSERTED MULTIWORD COMMANDS. AND IN EACH CASE, I COLORED IN A

03:58:36 15   CELL, EACH OF THE TERMS IS COLORED, ONE OF THOSE THREE COLORS

03:58:41 16   UP ON THE PAPER OVER THERE, IT'S EITHER A BROWN, IF IT'S FROM A

03:58:45 17   LEGACY CLI, BLUE, IF I CONSIDER IT TO BE A COMMON NETWORKING

03:58:50 18   TERM, AND GREEN, IF IT COMES FROM ONE OF THOSE TWO STANDARDS

03:58:55 19   BADDIES WE JUST TALKED ABOUT.

03:59:01 20   Q.   AND DID DOUBLE CHECK THIS TO CONFIRM THE TERMS WERE FOUND

03:59:07 21   IN RFC'S, IF THAT'S WHAT YOU INDICATE ON HERE?

03:59:11 22   A.   MANY TIMES.

03:59:12 23   MR. FERRALL: YOUR HONOR, AT THIS POINT I WOULD LIKE

03:59:13 24   TO DISPLAY THIS TO THE JURY.

03:59:16 25   THE COURT: ARE YOU GOING TO MOVE IT INTO EVIDENCE?

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2108

03:59:18 1   MR. FERRALL: ULTIMATELY, I WOULD LIKE TO, BUT IF I

03:59:20 2   CAN AT LEAST USE IT AS A DEMONSTRATIVE AT THIS POINT.

03:59:23 3   THE COURT: ANY OBJECTION TO IT BEING A DEMONSTRATIVE

03:59:25 4   AT THIS POINT?

03:59:25 5   MR. NELSON: NO, YOUR HONOR.

03:59:26 6   THE COURT: OKAY.

03:59:26 7   MR. NELSON: THAT'S OKAY.

03:59:29 8   BY MR. FERRALL:

03:59:31 9   Q.   SO DR. BLACK, I KNOW YOU EXPLAINED THIS BEFORE IT WAS UP

03:59:35 10   ON THE SCREEN, BUT CAN YOU EXPLAIN TO THE JURY AGAIN WHAT IS

03:59:41 11   SHOWN HERE.

03:59:42 12   A.   SURE. SO THIS IS AN ALPHABETICAL LISTING, IT'S 506 LINES

03:59:47 13   LONG BECAUSE EVERY COMMAND THAT'S ASSERTED BY CISCO IS LISTED

03:59:50 14   HERE.

03:59:50 15   AND THEN IN EACH CASE, LINE BY LINE, IF A GIVEN COMMAND

03:59:54 16   TERM LIKE AAA, THAT'S THE FIRST ONE HERE, IF THAT'S FOUND IN AN

04:00:00 17   ITEF OR IEEE DOCUMENT, I COLORED IT GREEN.

04:00:03 18   SO THERE IS AN AAA STANDARD IN THE ITEF. AND SO I COLORED

04:00:08 19   IT GREEN. AND THERE'S ONE REGARDING ACCOUNTING, I COLORED THAT

04:00:12 20   GREEN AS WELL.

04:00:13 21   THERE'S SOME THAT ARE BLUE BECAUSE I DIDN'T CONSIDER THEM

04:00:16 22   TO BE -- I DIDN'T FIND THEM IN ANY STANDARDS DOCUMENT, BUT I

04:00:22 23   CONSIDER THEM TO BE COMMON ENOUGH TERMS THAT EVERYBODY WOULD

04:00:24 24   KNOW THEM AND UNDERSTAND THEM.

04:00:25 25   THERE ARE SOME BROWN ONES THAT ARE FURTHER DOWN. THOSE

04:00:30 1   ARE TAKEN FROM THAT FIRST LIST THAT CORRESPOND TO THAT BROWN

04:00:34 2   CIRCLE UP ON THE TOP, THE POSTER BOARD OVER THERE.

04:00:37 3   AND THEN IF I DIDN'T FIND THEM ANYWHERE AND DIDN'T

04:00:40 4   CONSIDER THEM TO BE COMMON TERMS, I LEFT THEM AS WHITE.

04:00:43 5   Q.   OKAY. SO WE SEE HERE NOW, HERE'S A PAGE WITH MORE BROWN

04:00:49 6   AND BLUE.

04:00:54 7   THIS HAS, FOR EXAMPLE, THE "SHOW COMMANDS" YOU FOUND FROM

04:00:57 8   LEGACY OPERATING SYSTEM; IS THAT RIGHT?

04:00:59 9   A.   TO BE CLEAR, I FOUND THE WORD "SHOW" USED AS A COMMAND IN

04:01:05 10   THOSE OPERATING SYSTEM, NOT NECESSARILY THE ENTIRE COMMAND

04:01:08 11   SHOWN HERE.

04:01:08 12   Q.   FAIR ENOUGH. THANK YOU.

04:01:10 13   AND YOU ARE NOT -- YOU HAVE A NUMBER OF TERMS HERE IN

04:01:13 14   WHITE, AND THOSE REFLECT THE FACT THAT THESE WERE NOT PRESENT

04:01:19 15   FROM YOUR INVESTIGATION IN LEGACY OPERATING SYSTEMS OR RFC; IS

04:01:30 16   THAT RIGHT?

04:01:30 17   A.   RIGHT. YOU CAN SEE ALL STATISTICS, COOLING, POWER,

04:01:36 18   TEMPERATURE. I MEAN, YOU CAN ARGUE IT'S A JUDGMENT CALL TO

04:01:41 19   DETERMINE WHETHER THAT'S A TERM THAT EVERYBODY KNOWS OR NOT.

04:01:43 20   IF I DID, I MADE IT BLUE. IF NOT, I LEFT IT WHITE.

04:01:48 21   IT WAS A JUDGMENT CALL. I TRIED TO MAKE IT REASONABLE AND

04:01:50 22   CONSERVATIVE WHEN I MADE THIS CHART.

04:01:53 23   Q.   YOU ARE NOT CLAIMING THAT EVERY WORD FROM CISCO IS FROM AN

04:01:56 24   RFC OR A PRIOR OPERATING SYSTEM?

04:01:57 25   A.   NO, THERE ARE PLENTY OF WHITE CELLS IN MY CHART HERE.

04:02:01 1   Q.   NOW, WERE YOU ASKED TO PROVIDE AN OPINION ON A DOCTRINE

04:02:08 2   KNOWN AS SCÈNES À FAIRE?

04:02:09 3   A.   YES, I WAS.

04:02:10 4   Q.   OKAY. IF WE COULD JUST PUT THAT SLIDE 22 UP, MR. DAHM.

04:02:16 5   AND YOU UNDERSTAND THIS IS A LEGAL DOCTRINE; RIGHT.

04:02:20 6   A.   THAT'S WHAT MY UNDERSTANDING IS.

04:02:22 7   Q.   AND THAT'S NOT YOUR SPECIALTY?

04:02:23 8   A.   IT IS DEFINITELY NOT.

04:02:25 9   Q.   BUT YOU UNDERSTAND THAT THIS DOCTRINE SAYS THAT MATERIAL

04:02:31 10   THAT FLOWS NATURALLY FROM CONSIDERATIONS OR FACTORS THAT ARE

04:02:38 11   EXTERNAL TO AN AUTHOR'S CREATIVITY SHOULD NOT BE PROTECTED BY

04:02:42 12   COPYRIGHT.

04:02:43 13   WAS THAT WHAT YOU FOLLOWED IN ASSESSING THIS?

04:02:46 14   A.   THAT WAS MY UNDERSTANDING, YES.

04:02:47 15   Q.   AND CAN YOU EXPLAIN TO THE JURY WHAT, IF ANY, EXTERNAL

04:02:53 16   CONSTRAINTS OR CONSIDERATIONS YOU FOUND TO BE PRESENT FOR THE

04:03:00 17   CISCO ENGINEERS AS THEY WERE DERIVING THESE CLI COMMANDS?

04:03:04 18   A.   RIGHT.

04:03:05 19   SO I MEAN, IF YOU IMAGINE YOU ARE GOING TO GO OUT AND

04:03:08 20   CREATE A NEW CLI COMMAND, I MEAN, PROBABLY THE FIRST THING YOU

04:03:12 21   ARE GOING TO DO IS THINK, WELL, WHAT DOES IT DO, WHAT'S THE

04:03:16 22   FEATURE THAT I'M TRYING TO DESCRIBE.

04:03:19 23   AND SO IF YOU WANTED TO DO SOMETHING LIKE CLEAR

04:03:23 24   SPANNING-TREE COUNTERS, YOU MIGHT MAKE A NEW CLI COMMAND CALLED

04:03:27 25   CLEAR SPANNING TREE COUNTERS, THAT WOULD MAKE SENSE.

04:03:31 1   YOU PROBABLY WOULDN'T USE "SHOW IP INTERFACE" OR SOMETHING

04:03:39 2   THAT DOESN'T AT ALL DESCRIBE THE THING YOU ARE GOING TO DO. SO

04:03:41 3   I THINK THAT'S A CONSTRAINT. TRYING TO BE DESCRIPTIVE, TRYING

04:03:44 4   TO BE CLEAR, CONCISE. USE ABBREVIATIONS, WHEN IT MAKES SENSE,

04:03:47 5   IF THEY ARE WELL UNDERSTOOD.

04:03:49 6   WE ARE LAZY PEOPLE, NETWORK ENGINEERS, WE DON'T WANT TO

04:03:52 7   TYPE MORE THAN WE HAVE TO. SO IF WE CAN ABBREVIATE OR USE

04:03:55 8   SMALLER TERMS, THAT'S ATTRACTIVE, WE WANT TO DO THAT AS WELL.

04:03:59 9   AND ALSO, IF YOU NOT ADDING THE FIRST CLI COMMAND, THEN

04:04:03 10   YOU PROBABLY WANT TO MAKE IT FIT IN WITH THE COMMANDS YOU

04:04:07 11   ALREADY HAVE.

04:04:07 12   AND MR. REMAKER LAST WEEK TALKED A LITTLE BIT ABOUT THE

04:04:11 13   HIGHLY TECHNICAL ASPECTS OF CISCO'S PARSER THAT MIGHT CONSTRAIN

04:04:15 14   CHOICES ALONG THOSE LINES AS WELL.

04:04:20 15   Q.   DID YOU FIND IN THE EVIDENCE, ANY DOCUMENTS OR OTHER

04:04:25 16   TESTIMONY THAT SUGGESTED TO YOU THAT THE CISCO ENGINEERS

04:04:31 17   ACTUALLY FOLLOWED SOME OF THESE CONSTRAINTS AND WERE BOUND BY

04:04:35 18   SOME OF THESE CONSTRAINTS IN COMING UP WITH THE CLI COMMANDS?

04:04:38 19   A.   SURE. I MEAN, I REFERENCED MS. LIU'S USE, TAKING WORDS

04:04:44 20   DIRECTLY OUT OF THE STANDARDS, THOSE WOULD BE FAMILIAR TO

04:04:48 21   ENGINEERS.

04:04:48 22   MR. REMAKER, ONCE AGAIN, CITED SOME OF THOSE CONSTRAINTS

04:04:51 23   AND HE TALKED I THINK AT LENGTH ABOUT THIS DOCUMENT THEY HAVE

04:04:54 24   CALLED THE PARSER-POLICE MANIFESTO THAT ENSHRINES MANY OF THE

04:04:59 25   SAME SORTS OF CONCERNS AND CONSTRAINTS THAT I JUST DESCRIBED.

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2112

04:05:02 1   Q.   OKAY. IF WE COULD LOOK AT EXHIBIT 5175 WHICH IS ALREADY

04:05:08 2   ADMITTED.

04:05:18 3   DR. BLACK, YOU UNDERSTAND THIS WAS A VERSION OF THE

04:05:22 4   PARSER-POLICE MANIFESTO THAT'S IN EVIDENCE ALREADY?

04:05:26 5   A.   YES, I UNDERSTAND THAT.

04:05:27 6   Q.   AND CAN YOU EXPLAIN TO THE JURY HOW THIS PARSER-POLICE

04:05:33 7   MANIFESTO APPLIES TO YOUR SCÈNES À FAIRE OPINION?

04:05:39 8   A.   I MEAN THIS THING IS -- HAS, AMONG OTHER THINGS, ADVICE ON

04:05:44 9   HOW TO MAKE A GOOD CLI COMMAND THAT FITS IN WITH WHAT EXISTS

04:05:49 10   ALREADY AND MAKES SENSE TO THE USERS AND FOLLOWS THOSE

04:05:52 11   CONSTRAINTS THAT I JUST MENTIONED A MOMENT AGO.

04:05:54 12   Q.   OKAY. IF WE COULD GO TO THE GUIDELINES --

04:06:00 13   AND MR. DAHM, I THINK IT'S ON THE SECOND PAGE OR THIRD

04:06:03 14   PAGE, MAYBE.

04:06:14 15   SO I GUESS, DR. BLACK, THIS LOOKS LIKE PART OF THE

04:06:17 16   GUIDELINES SECTION. IS THERE ONE IN PARTICULAR -- IF YOU COULD

04:06:25 17   LOOK IN YOUR BINDER.

04:06:27 18   A.   I'M SORRY, WHAT WAS THE EXHIBIT NUMBER?

04:06:29 19   Q.   AH. SORRY. 5175.

04:06:45 20   A.   OKAY. I HAVE IT.

04:06:51 21   Q.   SO THE QUESTION, DR. BLACK, IS WERE THERE PARTICULAR

04:06:57 22   GUIDELINES OR ASPECTS OF THE PARSER-POLICE MANIFESTO THAT YOU

04:07:00 23   FOUND RELEVANT TO THE SCÈNES À FAIRE OPINION?

04:07:03 24   A.   WELL, I THINK IN SOME SENSE THEY ALL ARE, INSOFAR AS THEY

04:07:07 25   ARE THE GIVING ADVICE ON WHAT TO DO AND WHAT NOT TO DO.

04:07:11 1   WE COULD TAKE, FOR EXAMPLE, PERHAPS BULLET SIX, WHICH IS I

04:07:23 2   THINK IS -- IT'S A LITTLE BIT FADED ON MY COPY. YEAH, THIS I

04:07:27 3   THINK IS A GOOD EXAMPLE.

04:07:28 4   Q.   SO CAN YOU EXPLAIN WHAT YOU UNDERSTOOD THIS TO MEAN?

04:07:32 5   A.   CAN I READ THE FIRST SENTENCE INTO THE RECORD?

04:07:34 6   Q.   SURE.

04:07:35 7   A.   SO IT SAYS, WHEN NAMING A COMMAND, TRY TO PICK NAMES THAT

04:07:38 8   WOULD BE FAMILIAR TO PEOPLE IN THE INDUSTRY. AND THEN THEY GO

04:07:42 9   TO GIVE SOME EXAMPLES.

04:07:44 10   WELL, I THINK I WAS TRYING TO CAPTURE THAT SAME ADVICE A

04:07:47 11   MOMENT AGO. IF YOU ARE GOING TO USE MTU, ALTHOUGH PEOPLE WHO

04:07:51 12   DON'T WORK IN NETWORKS, THAT MIGHT LOOK COMPLETELY MEANINGLESS,

04:07:57 13   TO SOMEONE THAT WORKS IN NETWORKING THAT MEANS MAXIMUM

04:08:00 14   TRANSMISSION UNIT, AND IT WOULD BE FAMILIAR.

04:08:02 15   AND I THINK IT MAKES A LOT OF SENSE BOTH FOR BREVITY AND

04:08:04 16   CLARITY AND FAMILIARITY TO USE A TERM LIKE THAT.

04:08:06 17   Q.   OKAY.

04:08:07 18   AND BASED UPON YOUR REVIEW OF ALL OF THE EVIDENCE IN THIS

04:08:14 19   CASE, WHAT CONCLUSION, IF ANY, DID YOU REACH CONCERNING THE

04:08:18 20   APPLICABILITY OF THE SCÈNES À FAIRE DOCTRINE TO THE ASSERTED

04:08:25 21   CLI ELEMENTS?

04:08:25 22   A.   I THINK GIVEN THE LARGE NUMBER OF CONSTRAINTS TO DESCRIBE

04:08:28 23   THE FEATURE YOU ARE IMPLEMENTING AND TO FOLLOW ALL OF THOSE

04:08:31 24   OTHER GUIDELINES THAT WERE SET FORTH IN THIS DOCUMENT AND

04:08:34 25   ACCORDING TO THE TESTIMONY WE'VE HEARD, THAT REALLY, THE

04:08:37 1   COMMAND THAT YOU END UP WITH FLOWS PRIMARILY FROM SOURCES AND

04:08:42 2   SUBJECT TO CONSTRAINTS OUTSIDE OF THE AUTHOR'S CREATIVITY.

04:08:49 3   Q.   ALL RIGHT.

04:08:50 4   NOW DR. BLACK, I WOULD LIKE TO TURN TO WHAT I THINK YOU

04:08:53 5   IDENTIFIED IN THE BEGINNING AS THE SECOND CATEGORY OF YOUR

04:08:57 6   ANALYSIS, AND THAT WAS FAIR USE; RIGHT?

04:09:00 7   A.   YES, SIR.

04:09:01 8   Q.   ARE YOU READY FOR THAT?

04:09:03 9   A.   I WILL DO MY BEST.

04:09:04 10   Q.   AND IF WE COULD JUST CALL UP SLIDE 25, PLEASE. YOU REFER

04:09:13 11   TO FOUR FAIR USE FACTORS IN THE BEGINNING.

04:09:16 12   DO YOU RECOGNIZE THESE AS THE FACTORS YOU WERE ASKED TO

04:09:20 13   CONSIDER?

04:09:20 14   A.   I THINK THEY ARE SHORTENED VERSIONS, BUT YES.

04:09:24 15   Q.   AND IF WE COULD JUST TICK THROUGH AGAIN, WE WILL GO INTO

04:09:27 16   SOME DETAIL, BUT AT A SUMMARY LEVEL, WHAT DID YOU FIND ON EACH

04:09:31 17   OF THESE FACTORS?

04:09:33 18   A.   YOU ARE ASKING FOR MY FINDINGS?

04:09:35 19   Q.   YES, YOUR FINDINGS AS TO EACH OF THEM.

04:09:38 20   A.   SO THE FIRST ONE, PURPOSE AND CHARACTER OF THE USE.

04:09:42 21   THAT ASKS: IS ARISTA, IN THIS CONTEXT, IS ARISTA

04:09:47 22   TRANSFORMATIVE? AND I FOUND IT WAS, IN FACT, HIGHLY

04:09:50 23   TRANSFORMATIVE, AS I MENTIONED EARLIER.

04:09:52 24   NATURE OF THE WORK. HERE THE WORK MEANS THE CISCO CLI.

04:09:55 25   CISCO USER INTERFACE. WHAT IS THE NATURE OF IT? AND AS I SAID

04:10:01 1   EARLIER, I FOUND IT TO BE A FACTUAL FUNCTIONAL OBJECT.

04:10:05 2   AMOUNT AND SUBSTANTIALITY OF THE PORTION USED. THAT'S

04:10:11 3   ASKING WHAT PROPORTION OF THE ACCUSED ELEMENTS, WHAT IS THAT

04:10:15 4   PROPORTION IN RELATION TO THE WORK AS A WHOLE? IN OTHER WORDS,

04:10:17 5   THE ENTIRE USER INTERFACE, AND IN MY VIEW, INCLUDING ITS

04:10:23 6   IMPLEMENTING SOURCE CODE.

04:10:25 7   AND I FOUND THAT ARISTA'S USE CONSTITUTED A VERY SMALL

04:10:27 8   FRACTION OF THE OVERALL CISCO USER INTERFACE.

04:10:30 9   AND THEN ON MARKET HARM, THAT'S MORE OF SOMETHING FOR A

04:10:34 10   MARKETING OR AN ANALYSIS OF DAMAGES EXPERTS, SOMETHING THAT I'M

04:10:38 11   NOT AN EXPERT IN.

04:10:39 12   SO I DIDN'T HAVE A LOT TO SAY THERE OTHER THAN WHAT I

04:10:43 13   MENTIONED BEFORE THAT ALL THESE OTHER VENDORS ARE USING THE

04:10:48 14   SAME CLI COMMANDS AND ELEMENTS THAT ARE ACCUSED HERE. THAT, I

04:10:54 15   THINK, HAS SOME INFLUENCE ON WHAT THE HARM TO THE MARKET COULD

04:10:56 16   THEREFORE BE.

04:10:57 17 Q.   AND ON THAT LAST POINT, YOU UNDERSTAND THAT YOUR FINDINGS

04:11:00 18   REGARDING THE WIDESPREAD USAGE, THAT WAS SOMETHING THAT ANOTHER

04:11:05 19   PERSON MAY COME TO TESTIFY ON BEHALF OF ARISTA TO TALK ABOUT

04:11:09 20   MARKET HARM?

04:11:10 21 A.   IT'S MY UNDERSTANDING THERE IS ANOTHER EXPERT WHO IS AN

04:11:13 22   EXPERT ON THIS TOPIC OF MARKET HARM, AND SHE RELIED UPON MY

04:11:18 23   ANALYSIS TO INFORM HER ULTIMATE DECISION AND OPINION.

04:11:22 24 Q.   ALL RIGHT. SO IF WE COULD TALK ABOUT THE FIRST FACTOR,

04:11:28 25   THE PURPOSE AND CHARACTER OF THE USE.

04:11:30   1   AND YOU CONSIDERED A COUPLE OF FACTORS ABOUT ARISTA'S

04:11:35   2   PRODUCT IN REACHING YOUR CONCLUSION ON THIS FACTOR; IS THAT

04:11:39   3   RIGHT?

04:11:39   4   A.   I DID.

04:11:39   5   Q.   ALL RIGHT. IF WE COULD LOOK AT SLIDE 26.

04:11:42   6   ARE THESE SOME OF THE CATEGORIES YOU CONSIDERED ABOUT

04:11:45   7   ARISTA'S PRODUCT?

04:11:46   8   A.   YES, THEY ARE.

04:11:49   9   Q.   CAN YOU EXPLAIN THEM TO THE JURY?

04:11:51 10   A.   SO ARCHITECTURE GOES TO THINGS LIKE THE SPEEDS AND FEEDS,

04:11:56 11   I THINK MS. ULLAL USED THAT TERM EARLIER, THE PORT DENSITY, HOW

04:12:01 12   MANY PORTS CAN YOU PACK INTO THE SWITCH AND HOW FAST DOES IT

04:12:05 13   GO, WHAT'S THE LATENCY. THE POWER CONSUMPTION, THAT SORT OF

04:12:08 14   CATEGORY.

04:12:08 15   THE SECOND ONE, EXTENSIBILITY AND RELIABILITY. THIS GOES

04:12:12 16   TO THE FACT THAT ARISTA DESIGNED ITS PRODUCT, IN PARTICULAR ITS

04:12:16 17   OPERATING SYSTEM, TO BE EASY TO CUSTOMIZE AND EXTEND AND ADD

04:12:21 18   NEW FEATURES TO. AND AT THE SAME TIME, MADE IT SUCH THAT IT

04:12:25 19   WAS FAIRLY A FOOLPROOF, THAT IT COULD SELF-HEAL AND WAS LESS

04:12:30 20   LIKELY TO CRASH.

04:12:31 21   AND THEN THAT LAST CATEGORY INDICATES THAT ARISTA WAS

04:12:35 22   TARGETING, PARTICULARLY IN THE LAST FEW YEARS, TARGETING THE

04:12:39 23   CLOUD AS THE CUSTOMER, AND THEY WANTED TO PROVIDE TOOLS AND

04:12:43 24   FEATURES THAT WOULD GO TO MANAGEABILITY AND MONITORING AND

04:12:48 25   SCALEABILITY FOR SUPPORTING THOSE CUSTOMERS.

04:12:51   1   Q.   OKAY. SO TURNING TO ARCHITECTURE, IF YOU COULD LOOK AT

04:12:57   2   EXHIBIT 7355 IN YOUR BINDER.

04:13:08   3   A.   I'M SORRY, 7355?

04:13:09   4   Q.   YES.

04:13:10   5   A.   I'M THERE.

04:13:11   6   Q.   AND DO YOU RECOGNIZE THAT?

04:13:13   7   A.   I DO.

04:13:14   8   Q.   WHAT IS IT?

04:13:15   9   A.   THIS IS A DATA SHEET WHICH IS A LIST OF A BUNCH OF

04:13:19   10   TECHNICAL SPECIFICATIONS FOR AN ARISTA 7500 CHASSIS SWITCH.

04:13:24   11   MR. FERRALL: YOUR HONOR, I WOULD OFFER 7355 IN

04:13:27   12   EVIDENCE, IF IT'S NOT ALREADY.

04:13:30   13   MR. NELSON: NO OBJECTION.

04:13:30   14   THE COURT: IT WILL BE ADMITTED.

04:13:32   15   (DEFENDANT'S EXHIBIT 7355 WAS ADMITTED INTO EVIDENCE.)

04:13:32   16   BY MR. FERRALL:

04:13:32   17   Q.   DID YOU RELY UPON DOCUMENTS LIKE 7355 AND SIMILAR DATA

04:13:36   18   SHEETS TO CONSIDER THE PURPOSE AND CHARACTER OF ARISTA'S USE?

04:13:40   19   A.   YES.

04:13:41   20   Q.   AND CAN YOU HIGHLIGHT A COUPLE OF THINGS IN THIS DATA

04:13:45   21   SHEET THAT YOU FOUND RELEVANT TO THE NATURE OF ARISTA'S USE OF

04:13:51   22   THE ASSERTED CLI ELEMENTS?

04:13:54   23   A.   WELL, LIKE I SAID, THEIR HARDWARE WAS, AT LEAST AT THE

04:13:58   24   TIME IT WAS INTRODUCED, WAS FASTER THAN ANYTHING ELSE ON THE

04:14:01   25   MARKET, AND I THINK WE'VE HEARD SOME TESTIMONY ABOUT THAT.

04:14:04 1   THE LATENCY, WHICH IS THE TIME IT TAKES BETWEEN WHEN THE

04:14:08 2   BITS COME IN AND THE BITS GO OUT, AS ADVERTISED HERE AT UNDER

04:14:11 3   FOUR MICRO SECONDS. YOU CAN SEE IT ON THE LEFT-HAND SIDE AS

04:14:14 4   THE LAST BULLET UNDER PERFORMANCE.

04:14:18 5   ALSO THE PORT DENSITY, JUST ABOVE THAT, THE THREE BULLETS,

04:14:23 6   1152, IF YOU ARE DOING 10 GIGABIT PORTS, YOU HAVE FEWER IF YOU

04:14:29 7   ARE GOING 100 GIGABIT, BUT THAT'S PORT DENSITY.

04:14:33 8   AND THEN AS FAR AS POWER CONSUMPTION, IT'S MENTIONED TO

04:14:35 9   THE RIGHT ON THE THIRD PARAGRAPH, TYPICAL POWER CONSUMPTION OF

04:14:42 10 UNDER FOUR WATTS PER PORT FOR A FULLY LOADED CHASSIS SWITCH.

04:14:46 11 Q.   AND WHY IS POWER CONSUMPTION SOMETHING THAT MATTERS IN AN

04:14:51 12   ETHERNET SWITCH FOR THE MARKET THAT ARISTA WAS TARGETING?

04:14:55 13 A.   WELL, I MEAN, IF YOU IMAGINE A WAREHOUSE FULL OF THIS

04:15:00 14   STUFF AND THEY CONSUME A LOT OF POWER, IT'S GOING TO BE

04:15:03 15   EXPENSIVE AND IT'S GOING TO BE HOT.

04:15:05 16   SO POWER CONSUMPTION, I THINK MS. ULLAL THIS MORNING SAID

04:15:08 17   IT COULD COST MORE FOR POWER THAN IT DOES FOR THE ACTUAL

04:15:12 18   EQUIPMENT.

04:15:13 19   SO YOU HAVE TO BE VERY CONSCIENCE ABOUT HOW MUCH POWER IS

04:15:16 20   BEING USED.

04:15:16 21 Q.   OKAY. IF WE COULD TURN TO THE SECOND CATEGORY, WHICH WAS

04:15:26 22   EXTENSIBILITY AND RELIABILITY. AND FOR THAT, IF YOU COULD LOOK

04:15:31 23   AT EXHIBIT 7357.

04:15:36 24 A.   OKAY.

04:15:36 25 Q.   WHAT'S THAT?

04:15:43 1   A.   THIS IS A WHITE PAPER CALLED THE NEXT EOS, THE NEXT

04:15:48 2   GENERATION EXTENSIBLE OPERATING SYSTEM.

04:15:51 3   Q.   DID YOU RELY UPON EXHIBIT 7357 IN EVALUATING THE NATURE

04:15:56 4   AND PURPOSE OF ARISTA'S USE?

04:15:58 5   A.   I DID.

04:15:59 6   MR. FERRALL: YOUR HONOR, I WOULD OFFER 7357 IN

04:16:03 7   EVIDENCE.

04:16:03 8   MR. NELSON: NO OBJECTION, YOUR HONOR.

04:16:04 9   THE COURT: IT WILL BE ADMITTED.

04:16:07 10   (DEFENDANT'S EXHIBIT 7357 WAS ADMITTED INTO EVIDENCE.)

04:16:07 11   BY MR. FERRALL:

04:16:08 12   Q.   AND I GUESS IF WE COULD GO TO THE NEXT PAGE, MR. DAHM, OR

04:16:16 13   THE NEXT PAGE AFTER THAT, ACTUALLY.

04:16:19 14   CAN YOU EXPLAIN, DR. BLACK, WHAT YOU FOUND IN EXHIBIT 7357

04:16:27 15   RELATING TO EXTENSIBILITY AND RELIABILITY THAT INFORMED YOUR

04:16:32 16   OPINION?

04:16:33 17   A.   SURE.

04:16:35 18   ONCE AGAIN, IT'S A LITTLE HARD TO READ, WELL, THAT'S

04:16:38 19   BETTER. WELL, THE DIAGRAM THAT WAS DOWN BELOW HERE, THESE

04:16:44 20   CIRCLES ARE SHOWING YOU DIFFERENT PROCESSES THAT ARE RUNNING IN

04:16:47 21   PARALLEL ON THE ARISTA SWITCH AS PART OF THEIR OPERATING

04:16:51 22   SYSTEM.

04:16:51 23   AND THE IDEA FOR RELIABILITY IS THAT IF ONE OF THESE WERE

04:16:54 24   TO GO DOWN, THEN THERE'S ANOTHER PROGRAM CALLED PRODUCT MANAGER

04:16:58 25   THAT RESUSCITATES IT OR RESTARTS IT, SO THAT ADDS TO

04:17:02   1   RELIABILITY.

04:17:03   2   THERE ALSO ARE A NUMBER OF EXTENSIBILITY FEATURES THAT ARE

04:17:07   3   PART OF EOS. THERE IS A CLI THAT'S COMPLETELY CUSTOMIZABLE,

04:17:13   4   AND YOU CAN BARELY READ IT, IT SAYS "EOS SDK," ON THE

04:17:22   5   HIGHLIGHTED PORTION ON THE RIGHT-HAND SIDE.

04:17:23   6   BUT THAT'S THE SOFTWARE DEVELOPMENT KIT THAT LETS YOU

04:17:26   7   BASICALLY -- YOU COULD REWRITE ANY PART OF CLI YOU WANT, YOU

04:17:30   8   COULD ADD NEW CLI COMMANDS, YOU COULD OVERRIDE WHAT THE

04:17:35   9   EXISTING ONES DO, YOU COULD CHANGE THE HELP STRINGS TO WHATEVER

04:17:39 10   YOU WANT. THEY REALLY SET OUT TO MAKE A FULLY CUSTOMIZABLE

04:17:41 11   PRODUCT.

04:17:43 12   Q.   AND DID YOU SEE ANYTHING FROM CISCO ENGINEERS THAT

04:17:48 13   INFORMED YOUR OPINION ABOUT HOW THE ARISTA OPERATING SYSTEM WAS

04:17:55 14   TRANSFORMATIVE?

04:17:57 15   A.   YEAH. THERE'S THIS GENTLEMAN NAMED MR. PATIL, I THINK,

04:18:01 16   AND I SAW A MASTER'S THESIS AT MIT, I BELIEVE HE WORKED AT

04:18:07 17   CISCO FOR TEN YEARS OR SOMETHING LIKE THIS.

04:18:09 18   AND THEN HE LOOKED AT ARISTA EOS AND HE, IN HIS THESIS,

04:18:14 19   CALLED IT A NEW PARADIGM. AND HE WAS STUDYING RELIABILITY

04:18:19 20   ASPECTS RELATING TO EOS AT THAT POINT.

04:18:22 21   Q.   OKAY. SO LET ME -- IF WE COULD TALK ABOUT THE AUTOMATION

04:18:30 22   CATEGORY.

04:18:30 23   AND IF YOU COULD LOOK AT EXHIBIT 7408 IN YOUR BINDER.

04:18:37 24   A.   OKAY.

04:18:38 25   Q.   WHAT'S THAT?

04:18:40 1   A.   THIS IS ENTITLED -- THIS IS A WHITE PAPER ENTITLED "ARISTA

04:18:44 2   CLOUD NETWORKS."

04:18:46 3   Q.   AND CAN YOU EXPLAIN WHY YOU LOOKED AT THAT FOR PURPOSES OF

04:18:51 4   ANALYZING THE FAIR USE FACTORS?

04:18:54 5   A.   SURE.

04:18:54 6   SO I WAS TRYING TO DETERMINE WHETHER ARISTA'S PRODUCTS

04:18:57 7   WERE TRANSFORMATIVE. AND WITH RESPECT TO THEIR INTEREST IN

04:19:03 8   CLOUD COMPUTING AND THOSE CUSTOMERS, THEY WANTED TO PROVIDE

04:19:07 9   TOOLS AND FEATURES THAT PROVIDED MANAGEABILITY. BECAUSE WHEN

04:19:13 10   YOU HAVE 10,000 SWITCHES, YOU CAN'T HAVE A GUY GO AROUND AND

04:19:20 11   TYPE IN CLI COMMANDS, YOU NEED TO BE ABLE TO HAVE MANAGEMENT

04:19:22 12   TOOLS MONITORING SO THAT YOU CAN KEEP AN EYE ON WHAT'S GOING ON

04:19:25 13   IN THAT DATA CENTER WITH THOSE 10,000 SWITCHES.

04:19:29 14   AND SCALEABILITY, BECAUSE YOU WANT TO BE ABLE TO GROW YOUR

04:19:32 15   NETWORK WITHOUT REACHING AN ARTIFICIAL LIMIT OR CEILING ON THE

04:19:36 16   GROWTH.

04:19:37 17   MR. FERRALL: YOUR HONOR, I WOULD OFFER EXHIBIT 7408

04:19:40 18   INTO EVIDENCE.

04:19:40 19   MR. NELSON: NO OBJECTION.

04:19:42 20   THE COURT: IT WILL BE ADMITTED.

04:19:44 21   (DEFENDANT'S EXHIBIT 7408 WAS ADMITTED INTO EVIDENCE.)

04:19:44 22   Q.   AND COULD YOU HELP MR. DAHM FIND THE PAGES HERE THAT ARE

04:19:52 23   TALKING ABOUT THE FEATURES YOU ARE REFERRING TO?

04:19:54 24   A.   I WILL DO MY BEST.

04:19:56 25   SO BATES ENDING IN 5213. THERE'S A PARAGRAPH AT THE

04:20:03 1   BOTTOM IT'S CALLED ZERO TOUCH PROVISIONING.

04:20:08 2   THIS IS A FEATURE THAT ARISTA CREATED THAT ALLOWS YOU TO

04:20:11 3   TAKE A BRAND-NEW ARISTA PRODUCT, SHOVE IT INTO A RACK IN YOUR

04:20:15 4   DATA SHEET AND THAT'S IT. AND IT WILL AUTOMATICALLY COME UP,

04:20:18 5   IT WILL SEARCH THE NETWORK LOOKING FOR AN OPERATING SYSTEM

04:20:22 6   IMAGE AND A CONFIGURATION FILE, DOWNLOAD THAT AND RUN IT FOR

04:20:26 7   YOU.

04:20:27 8   AND THIS MEANS YOU DON'T HAVE TO GO AROUND AND SET UP EACH

04:20:31 9   SWITCH ONE AT A TIME, YOU CAN DO IT AUTOMATICALLY.

04:20:33 10   AND THEY CALLED IT ZERO TOUCH BECAUSE YOU DON'T HAVE TO

04:20:36 11   TOUCH THE THING.

04:20:39 12   Q.   IF YOU COULD GIVE ONE EXAMPLE OF, I THINK YOU TALKED ABOUT

04:20:43 13   MONITORING?

04:20:44 14   A.   OKAY. SO MONITORING, VM TRACER IS A GOOD EXAMPLE OF THIS.

04:20:49 15   THESE DAYS COMPUTERS RARELY ARE COMPUTERS YOU CAN TOUCH,

04:20:51 16   AT LEAST IN THE DATA CENTER, THEY ARE THESE VIRTUAL MACHINES,

04:20:55 17   THESE PRETEND COMPUTERS.

04:20:56 18   AND THOSE MOVE AROUND. AND BEING ABLE TO FOLLOW THEM AS

04:20:59 19   THEY MOVE AROUND CAN BE A CHORE. AND SO ARISTA CREATED THE VM

04:21:04 20   TRACER TO HELP TRACK THE MOVEMENT OF THESE VIRTUAL COMPUTERS

04:21:07 21   AROUND THE DATA CENTER.

04:21:08 22   Q.   AND I THINK YOU ALSO MENTIONED IN THIS CATEGORY OF

04:21:11 23   AUTOMATION, SCALEABILITY?

04:21:14 24   A.   RIGHT.

04:21:15 25   SO THE NEXT ONE, VX LAN, GOES THAT. AND I HAVE TO GET

04:21:21 1   KIND OF TECHNICAL TO EXPLAIN REALLY WHAT THIS DOES, BUT THE

04:21:24 2   IDEA IS YOU HAVE THESE VLANS, AND YOU COULD ONLY HAVE 4096 OF

04:21:29 3   THEM. AND THAT'S A PROBLEM WHEN YOU'VE GOT A BILLION OF THEM,

04:21:29 4   RIGHT.

04:21:32 5   Q.   A VLAN IS A LITTLE NETWORK OR SOME PART OF A NETWORK, IS

04:21:37 6   THAT FAIR?

04:21:38 7   A.   KIND OF.

04:21:41 8   BUT THE PROBLEM IS YOU HAVE TO GIVE VLAN'S A NUMBER. YOU

04:21:46 9   ONLY HAVE UP TO 4096. THAT'S A LIMIT, THAT'S A PROBLEM FOR

04:21:50 10   SOME CUSTOMERS, SO THIS ALLOWS YOU TO GET AROUND THAT.

04:21:55 11   Q.   TO BUILD REALLY BIG VLANS?

04:21:58 12   A.   REALLY BIG VLANS OR LOTS OF VLANS.

04:22:02 13   Q.   BY THE WAY, DID YOU SEE ANYTHING IN THE EVIDENCE THAT

04:22:07 14   SUGGESTED THAT CISCO ALSO THOUGHT THAT SOME OF THESE AUTOMATION

04:22:10 15   FEATURES WERE PRETTY GOOD IDEAS?

04:22:12 16   A.   YEAH. I MEAN, THERE'S A FEATURE THAT I DON'T THINK WE

04:22:17 17   WENT THROUGH, THIS XMPP FEATURE THAT MR. REMAKER HAD THE

04:22:21 18   E-MAILS WHERE IT SAYS, "KICK ASS, WE NEED TO DO THIS, LET'S

04:22:26 19   FOLLOW ON," I THINK ALSO THE ZTP FEATURE APPEARED FIRST IN

04:22:30 20   ARISTA, AND NOW CISCO HAS A COMPARABLE FEATURE CALLED POAP, FOR

04:22:35 21   "POWER ON AUTO PROVISIONING," THAT DOES ROUGHLY THE SAME THING.

04:22:39 22   Q.   CAN YOU LOOK AT EXHIBIT 6743 IN YOUR BINDER?

04:23:02 23   A.   I'M STARTING TO FEEL LOST AT SEA HERE. I HAVE IT.

04:23:09 24   Q.   WHAT'S THAT?

04:23:11 25   A.   IT IS A COLLECTION OF E-MAILS, APPARENTLY.

04:23:16 1   Q.   OKAY. DO YOU REMEMBER WHAT THIS RELATES TO REGARDING ZTP?

04:23:23 2   A.   I BELIEVE IT'S A SERIES OF E-MAILS FROM FOLKS AT CISCO

04:23:28 3   TALKING ABOUT THE ZTP FEATURE.

04:23:31 4   Q.   OKAY.

04:23:33 5   MR. FERRALL: YOUR HONOR, I MOVE EXHIBIT 6743 IN

04:23:38 6   EVIDENCE.

04:23:38 7   MR. NELSON: NO OBJECTION, YOUR HONOR.

04:23:39 8   THE COURT: IT WILL BE ADMITTED.

04:23:41 9   (DEFENDANT'S EXHIBIT 6743 WAS ADMITTED INTO EVIDENCE.)

04:23:41 10   BY MR. FERRALL:

04:23:53 11   Q.   AND DO YOU RECALL WHAT THE CISCO FOLKS WERE SAYING ABOUT

04:23:55 12   THE ARISTA ZTP FEATURE?

04:23:58 13   A.   YEAH, I THINK IT'S STATED HERE IN THE BULLETS THAT JUST

04:24:03 14   SHOWED UP ON MY SCREEN. SHALL I READ IT?

04:24:07 15   Q.   SURE. THE FIRST BULLET.

04:24:08 16   A.   THE FIRST BULLET SAYS, "I THINK IT WOULD BE BEST TO ADD

04:24:11 17   CONTEXT TO THE CHANGES WE'RE DOING TO MIMIC WHAT ARISTA ALREADY

04:24:14 18   OFFERS TODAY WITH THEIR ZTP."

04:24:18 19   Q.   AND THIS IS AS OF JUNE 2014?

04:24:21 20   A.   YES.

04:24:21 21   Q.   OKAY. HAVE WE FAIRLY COVERED THE SORT OF EVIDENCE YOU

04:24:31 22   CONSIDERED FOR THE FIRST FAIR USE FACTOR?

04:24:33 23   A.   I THINK I CONSIDERED ACTUALLY MORE THAN THIS, BUT THIS

04:24:36 24   COVERS MOST OF IT, YES.

04:24:37 25   Q.   OKAY. LET'S GO TO THE SECOND FACTOR WHICH IS THE NATURE

04:24:40   1   OF THE WORK.

04:24:43   2   CAN YOU TELL ME WHAT YOUR VIEWS ARE ON, OR OPINION IS ON

04:24:47   3   THE NATURE OF THE ASSERTED CISCO WORKS?

04:24:50   4   A.   YEAH. LIKE I SAID A COUPLE OF TIMES NOW, I THINK THE

04:24:53   5   CISCO CLI, IN FACT ALL CLI'S, ARE JUST ESSENTIALLY KNOBS AND

04:24:59   6   BUTTONS THAT ARE HOW YOU CONTROL THE DEVICE AND THEIR THEY'RE

04:25:03   7   FUNCTIONAL BY NATURE. COMMAND RESPONSES THAT COME BACK OUT ARE

04:25:07   8   STATING THINGS LIKE WHAT TIME IS IT, OR HOW MANY PACKETS PER

04:25:11   9   SECOND AM I SENDING, THOSE ARE FACTUAL STATEMENTS.

04:25:13   10   AND THEREFORE, I CONSIDERED THE CLI TO BE A FUNCTIONAL,

04:25:18   11   FACTUAL OBJECT.

04:25:19   12   Q.   WHAT ABOUT THE HELP STRINGS. WE HAVEN'T TALKED MUCH ABOUT

04:25:25   13   THOSE. DID YOU CONSIDER WHAT THOSE ARE IN TERMS OF THE NATURE

04:25:28   14   OF THE WORK?

04:25:29   15   A.   RIGHT. SO REMEMBER THE HELP STRINGS ARE THESE SHORT

04:25:32   16   ENGLISH DESCRIPTIONS OF WHAT THINGS DO. THERE ARE 221 OF THEM

04:25:36   17   IN THE CASE, I BELIEVE. AND THEY GIVE A FACTUAL STATEMENT

04:25:42   18   ABOUT WHAT IS THE PURPOSE OF A GIVEN TERM.

04:25:46   19   Q.   AND IF WE COULD LOOK AT SLIDE 23, PLEASE. THESE ARE SOME

04:25:57   20   EXAMPLES OF THE HELP STRINGS THAT ARE CURRENTLY ASSERTED IN THE

04:26:01   21   CASE, DR. BLACK?

04:26:03   22   A.   YES, THEY ARE.

04:26:03   23   Q.   ALL RIGHT. AND WHAT DID THIS LEAD YOU TO BELIEVE ABOUT

04:26:06   24   THE NATURE OF THE ASSERTED WORKS?

04:26:10   25   A.   ONCE AGAIN, THAT THESE HELP STRINGS ARE BASICALLY JUST

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2126

04:26:14   1   TELLING YOU A FACT ABOUT THE CORRESPONDING ELEMENT.

04:26:19   2   Q.   AND ONE MORE QUESTION ON THIS TOPIC. THERE'S BEEN SOME

04:26:25   3   DISCUSSION ABOUT THE WORKS AS A COMPILATION OF ELEMENTS.

04:26:32   4   HAVE YOU GIVEN ANY THOUGHT AS TO WHETHER THE COMPILATION

04:26:37   5   OF ELEMENTS AS OPPOSED TO INDIVIDUAL COMMANDS AND SO FORTH, IS

04:26:43   6   FUNCTIONAL OR FACTUAL IN NATURE?

04:26:47   7   A.   YEAH, I MEAN, I THINK THIS IS SORT OF A LEGAL ARGUMENT

04:26:50   8   THAT'S GOING ON TO SOME EXTENT, BUT FROM A TECHNICAL

04:26:54   9   STANDPOINT, I MEAN, WHEN YOU -- WHEN YOU ARE DESIGNING A

04:26:58 10   PRODUCT YOU DON'T GO, HEY, I HAVE THIS NIFTY CLI COMMAND, I

04:27:02 11   WONDER WHAT KIND OF FEATURE I CAN PUT IN THERE TO CORRESPOND.

04:27:05 12   IT'S THE OTHER WAY, RIGHT? YOU DECIDE WHAT FEATURES ARE

04:27:09 13   GOING INTO THE SWITCH THEN THAT DICTATES WHAT THE COMPUTATION

04:27:11 14   OF THE CLI COMMANDS IS.

04:27:17 15   Q.   ALL RIGHT. LET'S MOVE TO THE THIRD FACTOR WHICH IS THE

04:27:19 16   SUBSTANTIALITY OF THE USE.

04:27:22 17   DID YOU CONSIDER IN FAIR USE FACTOR ALSO?

04:27:25 18   A.   FOR MANY MONTHS, YES.

04:27:27 19   Q.   AND YOU UNDERSTAND THIS IS EXPOSE E SUPPOSED TO LOOK AT

04:27:36 20   THE WORK AS A WHOLE AS COMPARED TO THE PART OF THE WORK THAT

04:27:38 21   WAS USED OR IS ASSERTED AGAINST ARISTA; RIGHT?

04:27:41 22   A.   THAT'S MY UNDERSTANDING, YES.

04:27:43 23   Q.   OKAY. AND DID YOU HAVE ANY BASIS TO KNOW WHAT THE

04:27:49 24   BOUNDARIES WAS OF THE WORK AS A WHOLE?

04:27:52 25   A.   I MEAN, MY UNDERSTANDING IS THAT WHAT'S BEING ASSERTED IS

04:27:55 1   THE USER INTERFACE. AND TO ME, THE CISCO USER INTERFACE IS

04:27:59 2   CERTAINLY ALL THE ASSERTED ELEMENTS, BUT ALSO NON-ASSERTED

04:28:03 3   ELEMENTS. ITS LOOK AND FEEL, ITS BEHAVIOR, ITS TAB EXPANSION,

04:28:08 4   ITS PREFIX ABBREVIATION MECHANISM, ITS UP AND DOWN ARROWS. AND

04:28:14 5   THEN BEYOND THAT, ALL THE SOFTWARE THAT IMPLEMENTS THAT CLI, TO

04:28:18 6   ME, IS WHAT THE PIECES ARE THAT CONSTITUTE THE USER INTERFACE.

04:28:23 7   Q.   ALL RIGHT.

04:28:24 8   LET'S START WITH THAT LAST PART, THE SOFTWARE THAT

04:28:26 9   IMPLEMENTS THE CLI, THAT'S NOT ASSERTED IN THIS CASE AT ALL;

04:28:29 10   RIGHT?

04:28:29 11   A.   THAT'S MY UNDERSTANDING.

04:28:30 12   Q.   OKAY. AND YOU TALKED ABOUT SOME OTHER FEATURES LIKE TAB

04:28:35 13   COMPLETION OR HELP QUESTION MARKS AND SO FORTH. ARE THOSE

04:28:41 14   ASSERTED IN THE CASE?

04:28:43 15   A.   MY UNDERSTANDING IS THAT THEY'RE NOT. I MEAN, WHEN YOU

04:28:46 16   PRESS THE QUESTION MARK, THAT GIVES YOU HELP, THAT

04:28:48 17   FUNCTIONALITY IS NOT ASSERTED, IT'S THE STRINGS THAT COME OUT

04:28:51 18   THAT ARE BEING ASSERTED.

04:28:56 19   Q.   AND THEN GETTING TO THE ACTUAL WORDS, FOR EXAMPLE THE

04:29:07 20   COMMANDS, DID YOU DO ANYTHING TO ASSESS THE SUBSTANTIALITY OF

04:29:11 21   ARISTA'S USE OF COMMANDS?

04:29:12 22   A.   YES, IN FACT, THAT WAS THE BULK OF THE ANALYSIS I DID.

04:29:16 23   Q.   AND HOW DID YOU GO ABOUT DOING THAT?

04:29:19 24   A.   WITH GREAT PAIN.

04:29:21 25   SO THERE ARE THESE 506 COMMANDS, AND I COLLECTED A LARGE

04:29:28 1   VOLUME OF USER MANUALS FROM A VARIETY OF OTHER COMPANIES, I

04:29:31 2   THINK 18 OTHER SWITCH VENDORS AND ROUTER VENDORS IN THE

04:29:37 3   INDUSTRY.

04:29:37 4   THEN FOR EACH OF THESE 506 COMMANDS, LIKE AAA ACCOUNTING,

04:29:44 5   I WOULD GO THROUGH THE MANUALS AND SEE, DOES THIS VENDOR HAVE

04:29:47 6   THE PRODUCT THAT OFFERS AAA ACCOUNTING? AND IF IT DID, I WROTE

04:29:49 7   IT DOWN. AND IF IT DIDN'T, I DIDN'T.

04:29:51 8 Q.   DR. BLACK, LET ME BACK UP A SECOND.

04:29:54 9   WHAT I'M ASKING -- WE HAVEN'T GOTTEN TO THAT FACTOR YET.

04:29:58 10 A.   I'M SO SORRY.

04:29:59 11 Q.   NO, THAT'S ALL RIGHT. WE ARE ON THE SUBSTANTIALITY OF

04:30:01 12 ARISTA'S USE OF CISCO'S USER INTERFACE.

04:30:05 13   SO IN TERMS OF DETERMINING HOW MUCH THE ASSERTED COMMANDS,

04:30:11 14 YOU ARE WITH ME; RIGHT?

04:30:12 15 A.   I JUMPED AHEAD SOMEHOW, I MISUNDERSTOOD WHAT YOU WERE

04:30:15 16 ASKING. MY APOLOGIES.

04:30:17 17 Q.   SO IN TERMS OF DETERMINING HOW MUCH ARISTA USED OF FOR

04:30:21 18 EXAMPLE THE CLI COMMANDS IN COMPARISON TO THE COMMANDS OF THE

04:30:25 19 USER INTERFACE AS A WHOLE, WHAT DID YOU DO?

04:30:27 20 A.   OKAY. BACKING UP.

04:30:31 21   SO THERE ARE 506 COMMANDS ASSERTED. AND I WANTED TO KNOW,

04:30:35 22 WELL, HOW MANY COMMANDS DID THE CISCO PRODUCTS HAVE. THE ONLY

04:30:40 23 NUMBER I COULD FIND THAT CISCO PUBLISHED WAS 16,000 IN IOS.

04:30:45 24 AND YOU REMEMBER THERE ARE FOUR OPERATING SYSTEMS HERE. SO IOS

04:30:49 25 IS JUST ONE OF THOSE.

04:30:50   1   AND IN THAT CASE, 441 OF THE 506 ARE IOS COMMANDS. AND SO

04:30:55   2   I USED CISCO'S NUMERATOR OVER CISCO'S DENOMINATOR, 441 OUT OF

04:31:01   3   16,000, AND IT COMES OUT TO, I DON'T KNOW, 2.7 PERCENT OR

04:31:06   4   SOMETHING LIKE THAT.

04:31:07   5   Q.   OKAY. IF WE COULD LOOK AT 7343 IN YOUR BINDER, PLEASE.

04:31:26   6   A.   OKAY.

04:31:27   7   Q.   CAN YOU TELL US WHAT THAT IS?

04:31:29   8   A.   IT'S A HUGE BROCADE 6910 ETHERNET ACCESS SWITCH

04:31:34   9   CONFIGURATION GUIDE.

04:31:35 10   Q.   7343?

04:31:37 11   A.   DO I HAVE THE WRONG ONE?

04:31:41 12   Q.   MAYBE I HAVE THE WRONG EXHIBIT NUMBER. WE WILL COME BACK

04:31:47 13   TO THAT.

04:31:52 14   LET'S LOOK AT SLIDE 27, PLEASE. CAN YOU EXPLAIN WHAT

04:32:01 15   SLIDE 27 SHOWS?

04:32:05 16   A.   RIGHT. SO AGAIN, THIS IS THE THIRD FACTOR FOR FAIR USE,

04:32:09 17   LOOKING AT THE AMOUNT THAT ARISTA USED OUT OF THE TOTAL AMOUNT

04:32:13 18   OF NUMBER OF COMMANDS OUT OF IOS.

04:32:15 19   AND ONCE AGAIN, I USED 441 AS THE NUMBER OF IOS COMMANDS

04:32:18 20   IN THE ACCUSED 506. AND PUT IT OVER 16,000, WHICH WAS CISCO'S

04:32:23 21   NUMBER OF TOTAL IOS COMMANDS. AND THIS IS A DEPICTION OF THE

04:32:29 22   SLIVER OF THE ASSERTED COMES OUT OF THE WHOLE.

04:32:32 23   Q.   NOW DID YOU HAVE ANY WAY TO MEASURE WHETHER 2.7 PERCENT IS

04:32:41 24   A SUBSTANTIAL AMOUNT OR NOT? DO YOU HAVE ANY MEASURING STICK

04:32:47 25   AGAINST WHICH TO PRODUCE THAT?

04:32:49 1   A.   I'M SORRY. THE LAW, AS IT'S BEEN EXPLAINED TO ME, DOESN'T

04:32:53 2   GIVE YOU A NUMBER TO LOOK FOR. IT'S JUST -- YOU JUST LOOK AT

04:32:56 3   THIS AS ONE OF THE FACTORS.

04:33:14 4   (REDACTED)

04:33:14 5   Q.   OKAY. IF WE COULD LOOK AT EXHIBIT 4672 THAT'S ALREADY IN

04:33:18 6   EVIDENCE.

04:33:22 7   AND I THINK IF WE COULD GO TO PAGE 11, MR. DAHM. AND BLOW

04:33:30 8   UP THE TOP PARAGRAPH, PLEASE.

04:33:37 9   SO IS THIS A LITTLE ROMAN NUMERAL FOUR, IS THAT WHAT YOU

04:33:41 10   ARE REFERRING TO, DR. BLACK?

04:33:44 11   A.   THAT'S WHAT I WAS REFERRING TO, YES.

04:33:46 12   Q.   AND COULD YOU JUST READ THAT IN?

04:33:48 13   A.   SURE. "THE NORMAL RANGE OF TEN PERCENT TO 20 PERCENT

04:33:52 14   SIMILARITY BETWEEN THE CLI COMMAND NAMES USED BY INDUSTRY

04:33:56 15   PARTICIPANTS AND THE CISCO CLI."

04:34:00 16   Q.   AND YOU UNDERSTAND THIS IS A DOCUMENT THAT CISCO AGREED

04:34:03 17   TO?

04:34:03 18   A.   THAT'S MY UNDERSTANDING.

04:34:05 19   Q.   WERE YOU ABLE TO ASSESS THE SUBSTANTIALITY WITH REGARD TO

04:34:17 20   HELP STRINGS?

04:34:20 21   A.   YEAH. NOW WE ARE MOVING TO A DIFFERENT OPERATING SYSTEM.

04:34:23 22   THIS IS XR, AND MY UNDERSTANDING IS THAT CISCO IS ONLY

04:34:26 23   ASSERTING ITS HELP STRINGS FOR THAT ONE OPERATING SYSTEM. AND

04:34:34 24   I COMPARED THAT TO THE TOTAL NUMBER OF HELP STRINGS.

04:34:37 25   IN ORDER TO DO THAT, I HAD TO GO OVER TO CISCO'S

04:34:39 1   ATTORNEY'S LAW OFFICE WHERE THEY HAD A COMPUTER THAT HAD SOURCE

04:34:42 2   CODE FOR IOS XR, AND I WROTE A SHORT SCRIPT THAT COUNTED UP HOW

04:34:47 3   MANY TOTAL HELP STRINGS THERE ARE THERE, AND I PUT THAT

04:34:50 4   NUMERATOR OVER THE DENOMINATOR I COMPUTED.

04:34:55 5   Q.   WHAT DID YOU GET FOR THE TOTAL NUMBER OF HELP STRINGS?

04:34:58 6   A.   I THINK IT WAS -- I DIDN'T KNOW THERE WAS GOING TO BE A

04:35:01 7   TEST. I THINK IT WAS 221 OVER 52,290.

04:35:06 8   Q.   WELL THAT WAS MORE PRECISION THAN I COULD HAVE ASKED.

04:35:11 9   52,000 TOTAL HELP STRINGS?

04:35:12 10   A.   THEREABOUTS, YEAH.

04:35:13 11   Q.   ALL RIGHT. IF WE COULD LOOK AT SLIDE 28, PLEASE. WHAT

04:35:25 12   DOES THIS SHOW, DR. BLACK?

04:35:27 13   A.   IT SHOWS THE MATH THAT I WAS JUST TRYING TO REMEMBER.

04:35:30 14   IT'S THE 221 ACCUSED IOS XR HELP STRINGS OVER THE TOTAL THAT I

04:35:36 15   COUNTED WITH MY PROGRAM OF 52,000. AND IT'S ABOUT .4 PERCENT.

04:35:43 16   Q.   OKAY. I WANT TO ASK YOU ONE MORE QUESTION ABOUT THIS

04:35:47 17   THIRD FAIR USE FACTOR, SUBSTANTIALITY.

04:35:52 18   DID YOU LOOK AT THE DETAILS OF THE ARISTA COMMANDS TO SEE

04:35:56 19   WHAT SORT OF OTHER PARAMETERS OR FACTORS GO INTO THE ACTUAL

04:36:04 20   EXECUTION OF THE COMMANDS?

04:36:05 21   A.   YEAH. IN FACT, THAT'S AN IMPORTANT DETAIL.

04:36:08 22   SO WHEN CISCO ACCUSES THESE COMMANDS, A LOT OF THEM AREN'T

04:36:12 23   REALLY COMMANDS. YOU CAN'T EVER ACTUALLY TYPE THEM IN AS

04:36:15 24   WRITTEN AND GET A MEANINGFUL RESPONSE, YOU ARE GOING TO GET AN

04:36:18 25   ERROR.

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04:36:18 1   THERE'S A LOT MORE THAT GOES INTO THE COMMANDS THAN JUST

04:36:22 2   WHAT'S WRITTEN DOWN.

04:36:23 3   SO I COMPILED ONCE AGAIN FOR EVERY ONE OF THESE 506, THE

04:36:27 4   FULL DESCRIPTION FROM THE ARISTA MANUAL OF WHAT THE FULL SYNTAX

04:36:32 5   LOOKS LIKE.

04:36:33 6   Q.   IF WE COULD LOOK AT EXHIBIT, OR IF YOU COULD LOOK AT

04:36:38 7   EXHIBIT 9037 IN YOUR BINDER.

04:36:52 8   A.   OKAY.

04:36:52 9   Q.   WHAT'S THAT?

04:36:54 10   A.   THAT'S THE THING I JUST DESCRIBED THAT I PREPARED TO

04:36:58 11   ANSWER YOUR QUESTION.

04:36:59 12   Q.   YOU PREPARED THIS?

04:37:00 13   A.   I DID.

04:37:01 14   Q.   ALL RIGHT.

04:37:03 15   MR. FERRALL: YOUR HONOR, I WOULD LIKE TO MOVE

04:37:06 16   EXHIBIT 9037 IN EVIDENCE.

04:37:07 17   THE COURT: ANY OBJECTION?

04:37:08 18   MR. NELSON: IT'S OKAY, YOUR HONOR.

04:37:09 19   THE COURT: IT WILL BE ADMITTED.

04:37:11 20   (DEFENDANT'S EXHIBIT 9037 WAS ADMITTED INTO EVIDENCE.)

04:37:11 21   BY MR. FERRALL:

04:37:15 22   Q.   THE JURY CAN'T APPRECIATE THIS, SO HOW MANY PAGES ARE

04:37:19 23   THERE IN THIS?

04:37:22 24   A.   ABOUT 215.

04:37:25 25   Q.   ALL RIGHT. WE WON'T GO THROUGH MORE THAN ONE. BUT IF YOU

04:37:28 1   COULD, JUST BASED UPON THE FIRST PAGE HERE, EXPLAIN WHAT YOU

04:37:33 2   DID IN ORDER TO BE ABLE TO DETERMINE WHAT OTHER SORT OF PARTS

04:37:38 3   THERE ARE TO THE COMMAND OTHER THAN WHAT IS ASSERTED BY CISCO?

04:37:42 4   A.   OKAY. SO I WON'T INFLICT ON YOU EVERYTHING THAT'S WRITTEN

04:37:45 5   HERE, BUT IN THE LEFT MOST COLUMN, AAA ACCOUNTING, THAT'S WHAT

04:37:50 6   CISCO IS ASSERTING. AND THE NEXT COLUMN, AAA ACCOUNTING,

04:37:54 7   THAT'S WHAT CISCO WROTE AS THE ACCUSED ARISTA COMMAND.

04:37:57 8   AND THEN THE BIG BOX, THAT'S A SCREEN SHOT FROM THE ARISTA

04:38:01 9   MANUAL THAT SHOWS THE FULL SYNTAX, EVERYTHING THAT GOES INTO

04:38:05 10   THE AAA ACCOUNTING COMMAND.

04:38:07 11   SO YOU CAN'T JUST TYPE AAA ACCOUNTING EVER, IT WILL NEVER

04:38:11 12   WORK, YOU WILL ALWAYS GET AN ERROR. YOU HAVE TO SPECIFY AT

04:38:14 13   LEAST THREE MORE THINGS, THE TYPE WHICH COMES OUT OF THIS MENU

04:38:19 14   OF VARIOUS TYPE CHOICES, AND A CONNECTION AND A MODE. THEN AT

04:38:24 15   THAT POINT, YOU NOW HAVE A VALID COMMAND.

04:38:30 16   Q.   AND YOU DID THIS FOR ALL THE 506?

04:38:32 17   A.   I DID.

04:38:37 18   Q.   I WOULD LIKE TO TURN TO THE LAST FAIR USE FACTOR, MARKET

04:38:41 19   HARM.

04:38:41 20   AND YOU EXPLAINED THAT YOU ARE NOT AN ECONOMIST OR AN

04:38:45 21   ACCOUNTANT; RIGHT?

04:38:46 22   A.   DEFINITELY NOT.

04:38:47 23   Q.   AND SO WHAT DID YOU LOOK AT OR WHAT WERE YOU ASKED TO LOOK

04:38:53 24   AT THAT YOU UNDERSTAND MAY BE RELEVANT TO MARKET HARM?

04:38:57 25   A.   THAT'S THE POINT AT WHICH I SPENT A LOT OF TIME GOING

04:39:01   1   THROUGH ALL THESE MANUALS FROM VARIOUS VENDORS.

04:39:06   2   Q.   AND I THINK YOU TALKED ABOUT LOOKING AT 18 OR 20 DIFFERENT

04:39:15   3   VENDORS' INFORMATION; IS THAT RIGHT?

04:39:17   4   A.   THAT'S RIGHT.

04:39:18   5   Q.   OKAY. DID YOU FEEL LIKE YOU WERE ABLE TO REVIEW AND

04:39:25   6   ACCESS ALL THE INFORMATION THAT EXISTS ABOUT THE CLI COMMANDS

04:39:31   7   THAT THESE VENDORS USED OVER TIME?

04:39:33   8   A.   NO. I MEAN, I LOOKED AT A LOT OF MANUALS, AND SOME OF

04:39:38   9   THESE MANUALS WERE THOUSANDS OF PAGES, BUT THERE ARE DEFINITELY

04:39:41 10   MORE MANUALS OUT THERE THEY COULDN'T GET A HOLD OF.

04:39:46 11   I THINK DR. LI YESTERDAY, THE GUY THAT STARTED PROCKET, HE

04:39:50 12   SAID WHEN CISCO ACQUIRED THEM, HE WAS ORDERED TO DESTROY THE

04:39:53 13   MANUALS. THE.

04:39:54 14   SO THERE DEFINITELY ARE MANUALS THAT JUST AREN'T AVAILABLE

04:39:59 15   ANYMORE THAT WOULD HAVE, PERHAPS, CHANGED MY ANALYSIS IN SOME

04:40:02 16   WAYS.

04:40:03 17   Q.   AND DID YOU HAVE PERSONAL EXPERIENCE WITH THIS SORT OF

04:40:05 18   COMMAND LANGUAGE OR DEVICES THAT SOME OF THESE VENDORS USED?

04:40:08 19   A.   ABSOLUTELY. I MEAN, THEY USE A CLI LANGUAGE. IT'S IN

04:40:13 20   THIS FUNKY FORMAT WE JUST SAW ON THE LAST EXHIBIT WITH THE

04:40:16 21   BRACKETS AND THE VERTICAL BAR AND THE BRACES, AND I'VE KNOWN

04:40:20 22   HOW TO READ AND INTERPRET THAT SINCE I WAS A KID.

04:40:23 23   Q.   AND DO YOU THINK THE 18 OR 20, DOES THAT CONSTITUTE ALL OF

04:40:36 24   THE NETWORKING EQUIPMENT VENDORS OVER THE PAST 10 OR 15 OR

04:40:42 25   20 YEARS?

04:40:42 1   A.   ALL OF THEM?

04:40:44 2   Q.   YEAH.

04:40:44 3   A.   I WOULDN'T SAY ALL OF THEM, THERE DEFINITELY ARE NETWORK

04:40:48 4   VENDORS THAT JUST MAKE WIRELESS DEVICES. THERE MAY BE SOME

04:40:55 5   THAT I JUST MISSED.

04:40:56 6   I TRIED TO GET ALL OF THE VENDORS THAT I HEARD OF,

04:40:59 7   ARISTA'S ATTORNEYS MENTIONED A COUPLE OF MORE THAT I ADDED INTO

04:41:02 8   THE PILE. I NEVER HEARD OF PROCKET OR NEXT TOP BEFORE, SO I

04:41:05 9   ADDED THOSE IN AS WELL. SO I COVERED WHAT I THOUGHT WAS MANY

04:41:08 10   VENDORS, BUT CERTAINLY NOT EVERY VENDOR.

04:41:11 11   Q.   ALL RIGHT.

04:41:12 12   IN GENERAL, WHAT WAS YOUR CONCLUSION FROM LOOKING AT ALL

04:41:15 13   OF THESE MANUALS FROM ALL OF THESE VENDORS?

04:41:18 14   A.   SO MY CONCLUSION WAS LOOKING AT EACH OF THESE 506 AND

04:41:23 15   LOOKING THEM UP, A MANUAL FROM EACH VENDOR, THAT WAS THERE IS

04:41:28 16   VERY WIDESPREAD ADOPTION OF HUNDREDS OF THESE COMMANDS BY TEN

04:41:32 17   OR SOMETIMES 15 OR EVEN MORE OF THESE VENDORS.

04:41:36 18   Q.   WAS THAT A SURPRISE TO YOU?

04:41:42 19   A.   I MEAN, I GUESS SOMEWHAT. I KNEW BECAUSE I'VE USED DELL

04:41:45 20   AND I KNEW THAT OTHER VENDORS HAD IOS-LIKE CLI'S, THAT THERE

04:41:53 21   WOULD BE SOME MEASURE OF ADOPTION, I DIDN'T REALIZE IT WAS

04:41:57 22   GOING TO BE AS FAR REACHING AS IT WAS.

04:41:59 23   Q.   HAVE YOU SEEN ANY DOCUMENTS IN THIS CASE THAT SHOW AN

04:42:05 24   AWARENESS IN THE NETWORKING COMMUNITY THAT OTHERS USE A

04:42:10 25   CISCO-LIKE OR IOS-LIKE CLI?

04:42:13 1   A.   I THINK WE'VE SEEN A BUNCH OF EVIDENCE, PEOPLE HAVE CALLED

04:42:17 2   THEIR CLI IOS-LIKE OR INDUSTRY STANDARD IN THEIR BROCHURES. I

04:42:23 3   THINK, IN FACT I KNOW THAT BLADE NETWORK TECHNOLOGIES WHICH WAS

04:42:26 4   ACQUIRED BY IBM, THEY ACTUALLY CALL THEIR CLI IS-CLI, WHERE THE

04:42:32 5   I SIS INDUSTRY STANDARD.

04:42:35 6   SO I THINK THERE'S QUITE A BIT OF EVIDENCE.

04:42:37 7   Q.   WELL LET ME ASK YOU TO LOOK AT EXHIBIT 5001 IN YOUR

04:42:42 8   BINDER.

04:42:49 9   A.   OKAY.

04:42:50 10   Q.   DO YOU RECOGNIZE THAT?

04:42:52 11   A.   YES, I DO.

04:42:53 12   Q.   WHAT IS THAT?

04:42:54 13   A.   THAT IS A PATENT THAT I WOULD CALL THE '886 PATENT BECAUSE

04:43:01 14   THAT'S WHAT IT ENDS IN.

04:43:02 15   Q.   ALL RIGHT. AND DO YOU KNOW WHOSE PATENT THIS IS?

04:43:06 16   A.   IF I RECALL, THIS IS A PATENT THAT IS CISCO'S.

04:43:12 17   MR. FERRALL: YOUR HONOR, I OFFER EXHIBIT 5001 INTO

04:43:15 18   EVIDENCE.

04:43:16 19   MR. NELSON: IT'S OKAY, YOUR HONOR.

04:43:17 20   THE COURT: IT WILL BE ADMITTED.

04:43:17 21   (DEFENDANT'S EXHIBIT 5001 WAS ADMITTED INTO EVIDENCE.)

04:43:19 22   BY MR. FERRALL:

04:43:19 23   Q.   DID YOU CONSIDER THIS '886 PATENT AS PART OF EVALUATING

04:43:31 24   WHETHER THERE'S WIDESPREAD USAGE OF THE CLI COMMANDS IN THE

04:43:35 25   NETWORKING INDUSTRY?

04:43:37 1   A.   YES.

04:43:37 2   Q.   AND WHAT DOES THIS PATENT SAY IN THAT REGARD?

04:43:40 3   A.   IT MORE OR LESS SAYS IN THE FRONT PART OF ENGLISH PORTION

04:43:45 4   OF THE PATENT, PAGE -- BATES 037, IT SAYS THAT --

04:43:48 5   Q.   LET'S WAIT UNTIL MR. DAHM CAN PULL THAT UP.

04:43:51 6   A.   I'M SORRY.

04:43:56 7   Q.   I THINK IT'S THE FIRST PARAGRAPH; IS THAT RIGHT?

04:43:59 8   A.   I THINK IT MIGHT BE SORT OF THE END OF THE FIRST

04:44:03 9   PARAGRAPH, I DON'T REMEMBER SITTING HERE RIGHT NOW. IT IS THE

04:44:08 10   MIDDLE OF THE PARAGRAPH IT SAYS "MANY COMPANIES NOW STRIVE."

04:44:11 11   Q.   RIGHT. CAN YOU READ THAT?

04:44:12 12   A.   SURE.

04:44:13 13   "MANY COMPANIES NOW STRIVE TO SUPPORT SOME VARIATION ON

04:44:17 14   IOS CLI IN THEIR ROUTING SYSTEMS, AND MANY CONSUMERS HAVE

04:44:20 15   INVESTED HEAVILY IN IOS CLI SUPPORT, DEVELOPING COMPLICATED

04:44:27 16   SCRIPTS TO HANDLE VARIOUS CONFIGURATION AND ACCESS NEEDS."

04:44:37 17   Q.   THIS IS CISCO MAKING THIS STATEMENT, YOU UNDERSTAND?

04:44:40 18   A.   YES.

04:44:40 19   Q.   OKAY. NOW, LET'S TURN, I THINK YOU MENTIONED PROCKET AS

04:44:47 20   ONE OF THE COMPANIES YOU LOOKED AT?

04:44:49 21   A.   TO THE EXTENT THAT I COULD GET A HOLD OF MANUALS, I DID

04:44:52 22   LOOK AT PROCKET, YES.

04:44:53 23   Q.   AND DID YOU PREPARE A SUMMARY OF THE FINDINGS WITH REGARD

04:45:02 24   TO THE PROCKET MANUALS THAT YOU WERE ABLE TO REVIEW?

04:45:06 25   A.   YES, I DID.

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2138

04:45:07 1   Q.   IF YOU COULD LOOK AT EXHIBIT 9052.

04:45:26 2   A.   OKAY.

04:45:27 3   Q.   IS THAT YOUR PROCKET SUMMARY?

04:45:29 4   A.   YES, IT IS.

04:45:30 5   Q.   AND THAT'S BASED UPON YOUR REVIEW AND EXTRACTION OF

04:45:36 6   COMMANDS FROM PROCKET MANUALS?

04:45:38 7   A.   THAT'S RIGHT.

04:45:39 8   MR. FERRALL: YOUR HONOR, I WOULD OFFER EXHIBIT 9052

04:45:42 9   IN EVIDENCE.

04:45:42 10   MR. NELSON: NO OBJECTION, YOUR HONOR.

04:45:45 11   THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

04:45:50 12   (DEFENDANT'S EXHIBIT 9052 WAS ADMITTED INTO EVIDENCE.)

04:45:50 13   BY MR. FERRALL:

04:45:51 14   Q.   WHAT DOES 9052 SHOW?

04:45:53 15   A.   IT SHOWS A LIST OF CLI COMMANDS FROM, THAT I WAS ABLE TO

04:45:56 16   FIND IN PROCKET MANUALS, AND IT SHOWS A TOTAL OF 296.

04:46:02 17   Q.   AND THIS IS FROM THE 2003, 2004 TIME PERIOD; IS THAT

04:46:09 18   RIGHT?

04:46:09 19   A.   THAT'S RIGHT.

04:46:10 20   Q.   AND WAS THERE A REASON THAT YOU WERE INTERESTED IN SEEING

04:46:18 21   THE USAGE OF CLI COMMANDS IN THE 2003, 2004 TIME PERIOD?

04:46:24 22   A.   YEAH. SO I SAW A LETTER FROM STANFORD TO CISCO.

04:46:31 23   APPARENTLY, I DON'T KNOW ALL THE LEGAL UNDERPINNINGS, BUT

04:46:34 24   APPARENTLY CISCO HAD TO ASK STANFORD FOR PERMISSION TO PURSUE

04:46:42 25   OTHER COMPANIES THEY THOUGHT WERE INFRINGING AND THEY ASKED FOR

04:46:45 1   PERMISSION TO SUE HUAWEI, PROCKET, JUNIPER, DELL, AND FORCE10.

04:46:50 2   AND AS WE ALL NOW KNOW, CISCO PURSUED HUAWEI. AND I WAS

04:46:56 3   CURIOUS AS TO WHY, TO MY KNOWLEDGE, THEY DIDN'T PURSUE THESE

04:47:00 4   OTHER COMPANIES, AND I WAS WONDERING WHAT THEIR CLI OVERLAPS

04:47:04 5   WERE IN THE RELEVANT TIME PERIOD.

04:47:05 6   Q.   OKAY. AND HAVE YOU EVER HEARD ANYTHING ABOUT PROCKET

04:47:15 7   TAKING CISCO'S SOURCE CODE?

04:47:16 8   A.   NO.

04:47:17 9   Q.   OKAY. SO YOU HEARD THE ALLEGATION THAT IS HUAWEI TOOK

04:47:20 10 CISCO'S SOURCE CODE; RIGHT?

04:47:21 11 A.   YES.

04:47:23 12 Q.   ALL RIGHT. SO YOU FOUND PROCKET HAD HOW MANY COMMON CLI

04:47:28 13 COMMANDS?

04:47:29 14 A.   I THINK IT WAS 296.

04:47:33 15 Q.   AND HAVE YOU EVER HEARD ANY EVIDENCE THAT CISCO PURSUED A

04:47:38 16 CLAIM AGAINST PROCKET?

04:47:39 17 A.   NOT TO MY KNOWLEDGE.

04:47:42 18 Q.   OR ANY OF THE OTHER COMPANIES THAT YOU LISTED THAT WERE

04:47:48 19 THE SUBJECT OF THIS LETTER TO STANFORD?

04:47:50 20 A.   NOT TO MY KNOWLEDGE.

04:47:52 21 Q.   OKAY. NOW GOING TO CURRENT, YOU LOOKED AT 18-SOME

04:48:01 22 VENDORS. DID YOU TRY TO COMPILE ALL OF THE RESULTS THAT YOU

04:48:05 23 FOUND FROM ALL 18 VENDORS?

04:48:07 24 A.   I DID, YES.

04:48:08 25 Q.   AND IF YOU COULD LOOK AT 9041, PLEASE.

04:48:19   1   A.   OKAY.

04:48:20   2   Q.   WHAT IS THAT?

04:48:22   3   A.   THIS IS A SORTED LIST OF ALL OF THE ASSERTED COMMANDS, I

04:48:29   4   DON'T THINK IT HAS ALL OF THEM, BUT IT AS MANY OF THE ASSERTED

04:48:33   5   COMMANDS BY THE NUMBER OF VENDORS ADOPTING EACH OF THOSE

04:48:37   6   COMMANDS.

04:48:37   7   MR. FERRALL: OKAY. AND YOUR HONOR, I WOULD LIKE TO

04:48:39   8   USE THIS AS A DEMONSTRATIVE.

04:48:40   9   THE COURT: OKAY.

04:48:41 10   MR. FERRALL: IF WE COULD PUT UP 9041, PLEASE.

04:48:49 11   Q.   COULD YOU EXPLAIN TO THE JURY HERE WHAT IS SHOWN AT THE

04:48:53 12   TOP 20, 30 LINES HERE?

04:48:55 13   A.   SURE. SO LINE 1, IP ADDRESS, THAT'S ASSERTED BY CISCO IN

04:48:59 14   THIS LAWSUIT, AND I WAS ABLE TO FIND A COMMAND IP ADDRESS IN 18

04:49:04 15   OTHER VENDOR MANUALS.

04:49:06 16   AND THEN GOING DOWN THE LIST, "SHOW CLOCK," 17 OTHER

04:49:09 17   VENDOR MANUALS, AND SO FORTH DOWN THE LIST. AND YOU WILL

04:49:12 18   NOTICE IT'S SORT DESCENDING ON THE RIGHT-HAND COLUMN.

04:49:18 19   Q.   AND THIS GOES ON FOR HOW MANY PAGES?

04:49:20 20   A.   THEY ARE NOT NUMBERED, BUT ABOUT TEN.

04:49:23 21   Q.   AND SOME OF THE COMMANDS ONLY HAVE MAYBE TEN VENDORS?

04:49:30 22   A.   YEAH. I MEAN, IF YOU GO A COUPLE OF PAGES DOWN, THEN YOU

04:49:34 23   CAN SEE SOME, I GUESS THE 140TH COMMAND LISTED HERE HAS NINE

04:49:44 24   VENDORS ADOPTING THAT COMMAND.

04:49:45 25   Q.   OKAY. SO FOR THIS -- THIS MEANS FOR THE 140TH COMMAND,

04:49:54 1   THERE ARE NINE VENDORS WHO ARE USING IT, IF FOR THOSE 140 THAT

04:50:00 2   ARE ABOVE THIS IN THE CHART, THERE'S NINE OR MORE VENDORS USING

04:50:04 3   THAT COMMAND; IS THAT RIGHT?

04:50:05 4   A.   THAT'S RIGHT. AND TO BE CLEAR, ARISTA AND CISCO ARE NOT

04:50:07 5   COUNTED HERE, THESE ARE OTHER VENDORS.

04:50:09 6   Q.   OKAY. NOW WITH REGARD TO DELL, WERE YOU ABLE TO DO A

04:50:17 7   LITTLE BIT DIFFERENT ANALYSIS REGARDING DELL?

04:50:21 8   A.   YEAH. SO FOR DELL, WELL, ACTUALLY FOR EVERYONE, BUT I

04:50:24 9   STARTED WITH DELL, I TRIED TO WRITE COMPUTER PROGRAMS SO THAT I

04:50:28 10   DIDN'T TO MANUALLY GO THROUGH THESE MANUALS MYSELF AND SCRAPE

04:50:32 11   THE MANUALS AND CONVERT THEM AND DO AN AUTOMATED COMPARISON.

04:50:38 12   AND I DID THAT FOR DELL, BUT IT TOOK A VERY LONG TIME AND

04:50:42 13   I COULDN'T DO IT FOR EVERYONE ELSE.

04:50:44 14   Q.   HOW DID THE DELL COMPARISON DIFFER FROM THE SORT OF VENDOR

04:50:48 15   COUNT THAT WE JUST SAW?

04:50:53 16   A.   SO FOR THE CASE OF DELL I DID COMPLETE COMMAND COMPARISON.

04:50:57 17   SO THESE ARE VALID COMMANDS THAT ARE FULLY FORMED, THEY ARE NOT

04:51:00 18   JUST PARTS OF A COMMAND.

04:51:01 19   Q.   AND DID YOU CONSIDER ONLY THE 506 ASSERTED COMMANDS?

04:51:03 20   A.   NO, I CONSIDERED EVERY POSSIBLE OVERLAP BETWEEN CISCO AND

04:51:07 21   DELL.

04:51:07 22   Q.   OKAY. AND WHAT DID YOU FIND REGARDING THE OVERLAP BETWEEN

04:51:12 23   ALL CISCO COMMANDS THAT YOU COULD GATHER AND ALL OF THE DELL

04:51:19 24   COMMANDS THAT YOU COULD GATHER?

04:51:20 25   A.   I FOUND THAT AT LEAST 1400 COMMANDS, AND I OMITTED SINGLE

04:51:25   1   WORD COMMANDS SO AT LEAST 1400 MULTIWORD COMMANDS WERE SHARED

04:51:30   2   BETWEEN CISCO AND DELL.

04:51:31   3   Q.   AND IF YOU COULD LOOK AT EXHIBIT 9049 IN YOUR BINDER.

04:51:38   4   A.   OKAY.

04:51:38   5   Q.   WHAT IS THAT?

04:51:44   6   A.   IT'S THE LIST I JUST DESCRIBED WITH THE SINGLE WORD

04:51:48   7   COMMANDS STILL IN THERE. I THINK WE WANT A DIFFERENT EXHIBIT,

04:51:55   8   MAYBE.

04:51:56   9   Q.   WE DO, WE DO. OKAY. WE WILL COME BACK TO THAT ALSO.

04:52:05   10   DID YOU LOOK AT -- YOU LOOKED AT OTHER VENDORS LIKE

04:52:10   11   JUNIPER.

04:52:11   12   A.   I DID.

04:52:12   13   Q.   OKAY. AND DID YOU LOOK AT BROCADE AND FOUNDRY?

04:52:20   14   A.   RIGHT, YES.

04:52:21   15   Q.   ALL RIGHT. IF YOU COULD PULL UP 5630, PLEASE. OR IF YOU

04:52:30   16   COULD LOOK AT 5630.

04:52:39   17   A.   OKAY.

04:52:41   18   Q.   IS THAT YOUR SUMMARY OF YOUR RESULTS OF ANALYZING BROCADE

04:52:50   19   AND FOUNDRY COMMANDS?

04:52:53   20   A.   YES IT IS.

04:52:54   21   Q.   AND TO BE CLEAR, WITH REGARD TO BROCADE AND FOUNDRY, YOU

04:52:57   22   WERE ONLY COMPARING THE ASSERTED COMMANDS?

04:53:00   23   A.   I LIMITED MY MANUAL LOOK UPS TO JUST THOSE ASSERTED

04:53:06   24   COMMANDS, YES.

04:53:07   25   MR. FERRALL: AND YOUR HONOR, WE OFFER EXHIBIT 5630

04:53:10	1	AS A SUMMARY IN EVIDENCE.
04:53:11	2	MR. NELSON: NO OBJECTION, YOUR HONOR.
04:53:12	3	THE COURT: IT WILL BE ADMITTED.
04:53:14	4	(DEFENDANT'S EXHIBIT 5630 WAS ADMITTED INTO EVIDENCE.)
04:53:14	5	BY MR. FERRALL:
04:53:16	6	Q. SO IS THIS THE SORT OF RESULT YOU HAD FROM PERFORMING YOUR
04:53:20	7	ANALYSIS OF ASSERTED COMMANDS TO VENDOR USAGE?
04:53:30	8	A. YES, IT IS, FOR BROCADE, AND IT'S THE FIRST PAGE OF SEVEN.
04:53:35	9	Q. AND THE HOW MANY COMMANDS WERE YOU ABLE TO LOCATE IN
04:53:40	10	COMMON, OF THE 506 BETWEEN BROCADE AND CISCO?
04:53:44	11	A. I DON'T HAVE IT MEMORIZED AND IT'S NOT, THEY ARE NOT
04:53:49	12	NUMBERED HERE, BUT IT WAS A COUPLE HUNDRED.
04:53:51	13	Q. OKAY. ALL RIGHT. IF WE COULD LOOK AT 5635, PLEASE?
04:54:06	14	A. I'M THERE.
04:54:07	15	Q. IS THIS YOUR ANALYSIS WITH REGARD TO EXTREME NETWORKS?
04:54:10	16	A. YES IT IS.
04:54:11	17	MR. FERRALL: AND YOUR HONOR, I WOULD MOVE
04:54:13	18	EXHIBIT 5635 IN EVIDENCE.
04:54:15	19	MR. NELSON: NO OBJECTION, YOUR HONOR.
04:54:16	20	THE COURT: IT WILL BE ADMITTED.
04:54:18	21	(DEFENDANT'S EXHIBIT 5635 WAS ADMITTED INTO EVIDENCE.)
04:54:18	22	BY MR. FERRALL:
04:54:20	23	Q. AGAIN, THIS IS YOUR EXTREME ANALYSIS, SO TO SPEAK?
04:54:26	24	A. YES.
04:54:26	25	Q. ALL RIGHT.

04:54:27 1   AND DO YOU REMEMBER APPROXIMATELY HOW MANY COMMANDS WERE

04:54:30 2   IN COMMON OF THE 500, WERE IN COMMON BETWEEN CISCO AND EXTREME?

04:54:37 3   A.   IT WAS A COUPLE HUNDRED.

04:54:39 4   Q.   OKAY. AND LASTLY, IF I COULD ASK YOU TO LOOK AT 5637?

04:54:46 5   A.   OKAY, I'M THERE.

04:54:51 6   Q.   THIS IS YOUR ANALYSIS FOR COMPARING THE ASSERTED COMMANDS

04:54:55 7   TO HP?

04:54:56 8   A.   CORRECT.

04:54:57 9   MR. FERRALL: AND IF WE COULD MOVE EXHIBIT, I WOULD

04:55:00 10 LIKE TO MOVE EXHIBIT 5637 IN EVIDENCE, PLEASE.

04:55:03 11   MR. NELSON: NO OBJECTION, YOUR HONOR.

04:55:04 12   THE COURT: IT WILL BE ADMITTED.

04:55:08 13 (DEFENDANT'S EXHIBIT 5637 WAS ADMITTED INTO EVIDENCE.)

04:55:08 14 BY MR. FERRALL:

04:55:09 15 Q.   DO YOU REMEMBER APPROXIMATELY HOW MANY HP COMMANDS WERE IN

04:55:12 16 COMMON?

04:55:13 17 A.   I THINK IT WAS 1 OR 200.

04:55:15 18 Q.   ALL RIGHT.

04:55:22 19   NOW DID YOU ATTEMPT TO PULL TOGETHER ALL OF YOUR FINDINGS

04:55:32 20 REGARDING THESE DIFFERENT VENDORS AND THEIR COMMON USAGE OF

04:55:35 21 COMMANDS?

04:55:35 22 A.   YES.

04:55:36 23 Q.   IF WE COULD LOOK AT, AS A DEMONSTRATIVE, EXHIBIT 9061,

04:55:44 24 MR. DAHM, IF YOU COULD PULL THAT UP.

04:55:55 25 A.   I'M THERE.

04:55:56 1   Q.   WHAT'S THIS EXHIBIT?

04:55:58 2   A.   THIS IS A COMPILATION OF THE ANALYSIS WE JUST WALKED

04:56:06 3   THROUGH IN THOSE OTHER APPENDIXES.

04:56:09 4   Q.   COULD YOU JUST WALK US THROUGH THE DIFFERENT COLOR CODING

04:56:12 5   ON THIS CHART, EXPLAIN WHAT YOU ARE SHOWING?

04:56:15 6   A.   SURE. SO THERE'S A DIFFERENT COLOR FOR EACH VENDOR.

04:56:18 7   THERE ARE FIVE VENDORS. BROCADE IS RED, DELL IS ORANGE,

04:56:22 8   JUNIPER IS THIS OLIVE COLOR, HP BLUE, AND EXTREME IS THIS DARK

04:56:29 9   BLUE.

04:56:30 10   THEN ACROSS FROM EACH COMMAND, STARTING WITH, LET'S SAY

04:56:33 11   AAA ACCOUNTING, IF THERE'S A RED SQUARE, BROCADE HAS THAT

04:56:36 12   COMMAND, AN ORANGE ONE DELL, AND SO FORTH.

04:56:40 13   IF THE VENDOR DOESN'T HAVE THE COMMAND, THEN IT'S LEFT

04:56:42 14   WHITE.

04:56:43 15   Q.   OKAY. AND THE TITLE ON THIS ONE IS SUPPORTED BY AT LEAST

04:56:48 16   FOUR OF THESE VENDORS?

04:56:50 17   A.   RIGHT. SO THIS WAS A LIST OF COMMANDS THAT COMMANDS THAT

04:56:55 18   ARE USED BY AT LEAST FOUR OUT OF THE GIVEN FIVE.

04:56:59 19   Q.   AND HOW MANY COMMANDS FALL INTO THIS CATEGORY?

04:57:02 20   A.   LOOKING AT THE SECOND PAGE, 117.

04:57:06 21   Q.   AND THEN DID YOU FILTER IT FOR THE COMMANDS USED BY AT

04:57:11 22   LEAST THREE AND FEWER?

04:57:12 23   A.   YEAH, THAT'S THE NEXT PAGE DOWN.

04:57:14 24   Q.   OKAY. CAN YOU JUST SUMMARIZE, IF YOU FLIP THROUGH THE

04:57:18 25   EXHIBIT, AND TELL US HOW MANY VENDORS USE AT LEAST THREE OF

04:57:22 1   THESE COMMANDS?

04:57:23 2   A.   SURE.   THE TOTAL THERE IS --

04:57:26 3   THE COURT: YOU DIDN'T MEAN THREE COMMANDS.

04:57:29 4   MR. FERRALL: SORRY.   THANK YOU, THANK YOU,

04:57:30 5   YOUR HONOR.

04:57:33 6   LET ME REPHRASE, DR. BLACK.

04:57:36 7   Q.   IF YOU COULD SUMMARIZE HOW MANY OF THESE COMMANDS ARE USED

04:57:44 8   BY AT LEAST THREE VENDORS?

04:57:50 9   A.   SO FOR THE COMMANDS THAT ARE USED BY AT LEAST THREE OF

04:57:54 10   THOSE FIVE, THERE ARE 201 CONTINUING ON.   THE NUMBER OF

04:57:58 11   COMMANDS USED BY AT LEAST TWO OF THE FIVE, 289 CLI COMMANDS,

04:57:58 12   AND THEN FINALLY -- I'M SORRY, 298, I MAY HAVE MISSPOKE.

04:58:16 13   AND THEN IN THE FINAL CASE, THE NUMBER OF COMMANDS USER BY

04:58:17 14   AT LEAST ONE OF THESE FIVE, IS 392.

04:58:23 15   Q.   OKAY.   NOW IF WE COULD SPEAK FOR A SECOND ABOUT MODES.

04:58:34 16   THE DAY IS ALMOST OVER, BUT THIS WILL TAKE A MOMENT,

04:58:36 17   YOUR HONOR.

04:58:39 18   DID YOU LOOK FOR THE PRESENCE OF SIMILAR MODES ACROSS

04:58:45 19   THESE VENDORS?

04:58:47 20   A.   YES, I DID.

04:58:48 21   Q.   AND WHAT DID YOU FIND THERE?

04:58:49 22   A.   ONCE AGAIN, I LOOKED FOR THE FOUR ACCUSED MODES IN EACH OF

04:58:57 23   THE MANUALS FOR THE VENDORS WE JUST TALKED ABOUT AND I FOUND

04:59:01 24   THEM IN WIDESPREAD USE AS WELL.

04:59:05 25   Q.   IF YOU COULD LOOK AT EXHIBIT 9053?

04:59:11 1   A.   I'M THERE.

04:59:14 2   Q.   IS THAT A SUMMARY OF YOUR FINDINGS REGARDING THE MODES

04:59:18 3   PRESENT IN THE MANUALS YOU REVIEWED?

04:59:18 4   A.   YES, IT IS.

04:59:19 5   MR. FERRALL: YOUR HONOR, I OFFER 9053 INTO EVIDENCE.

04:59:22 6   MR. NELSON: NO OBJECTION.

04:59:23 7   THE COURT: IT WILL BE ADMITTED.

04:59:26 8   (DEFENDANT'S EXHIBIT 9053 WAS ADMITTED INTO EVIDENCE.)

04:59:26 9   BY MR. FERRALL:

04:59:26 10   Q.   AND AGAIN, CAN YOU EXPLAIN THE FINDINGS THAT ARE SHOWN IN

04:59:30 11   THIS EXHIBIT?

04:59:31 12   A.   YEAH. SO THE FIRST COLUMN IS CALLED STANFORD, THAT'S THE

04:59:35 13   ONE PRE-EXISTING PIECE OF SOFTWARE THAT HAD JUST TWO OF THE

04:59:38 14   ACCUSED MODES, USER AND PRIVILEGED.

04:59:40 15   AND THEN FOR THE REMAINDER, I LIST THESE VARIOUS VENDORS

04:59:44 16   AND SHOW EXAMPLES OF WHAT THEIR MODES AND PROMPTS LOOK LIKE,

04:59:48 17   AND I THINK THERE ARE ABOUT 30 EXAMPLES OVER OR SOMETHING LIKE

04:59:53 18   THAT.

04:59:53 19   Q.   SO IF WE COULD GO TO THE NEXT PAGE, MR. DAHM.

04:59:58 20   SO THIS CONTINUES FOR MULTIPLE PAGES?

05:00:01 21   A.   YES, IT DOES.

05:00:02 22   MR. FERRALL: ALL RIGHT.

05:00:03 23   YOUR HONOR, WITH THAT, I'M ALMOST DONE, BUT NOT QUITE.

05:00:09 24   THE COURT: IT'S A GOOD TIME TO STOP.

05:00:10 25   MR. FERRALL: OKAY.

05:00:11 1   THE COURT: OKAY. THANK YOU.

05:00:12 2   DR. BLACK, WE WILL SEE YOU TOMORROW MORNING.

05:00:15 3   LADIES AND GENTLEMEN, WE'VE REACHED THE END OF THE COURT

05:00:19 4   DAY. I'M HOPING TO HAVE MORE VOICE TOMORROW, I'M NOT COUNTING

05:00:21 5   ON IT.

05:00:22 6   PLEASE LEAVE ME YOUR BINDERS AND YOUR NOTEBOOKS AND YOUR

05:00:26 7   BADGES. I WILL SEE YOU AT 9:00 TOMORROW MORNING AND WE WILL

05:00:28 8   HAVE A FULL DAY.

05:00:30 9   (JURY OUT AT 5:00 P.M.)

05:00:38 10   THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

05:01:07 11   THE WITNESS: SHOULD I STAY HERE, YOUR HONOR?

05:01:09 12   THE COURT: YOU CAN GO BACK TO YOUR SEAT, THANK YOU

05:01:12 13   FOR ASKING.

05:01:13 14   ALL RIGHT. I HAVE ONE, I WILL LET MR. FERRALL FINISH,

05:01:17 15   SORRY, I'M IN A RUSH, EVERYONE WANTS TO GET OUT OF HERE.

05:01:22 16   I HAVE BEEN WORKING ON AN ORDER ON THE ANALYTIC DISSECTION

05:01:27 17   BASED UPON THE SUBMITTALS, AND THERE WERE SOME ELEMENTS THAT

05:01:32 18   WERE LEFT TO THE CONCLUSION OF TRIAL, WE ARE NOT AT THE

05:01:35 19   CONCLUSION OF TRIAL.

05:01:36 20   AND SO THE QUESTION IS, IS IT BENEFICIAL FOR ME TO ISSUE A

05:01:41 21   PRELIMINARY ORDER ON THE MATTERS THAT COULD BE -- THAT WERE

05:01:45 22   SUBMITTED ON THE WRITTEN RECORD? AND I AM VIRTUALLY READY TO

05:01:49 23   DO THAT, I'M LITERALLY PROOFREADING IT, BUT I DON'T WANT TO

05:01:53 24   ISSUE IT IF THAT'S NOT WHAT YOU WANT.

05:01:55 25   AND I'M NOT EVEN -- I'M WILLING TO, IN JURY INSTRUCTION

05:02:01 1   CONVERSATIONS, TO HAVE FURTHER DISCUSSION ABOUT ANY OF THE

05:02:04 2   FINDINGS I MAKE, IF YOU FEEL I'VE MISSED SOMETHING, BECAUSE

05:02:07 3   ULTIMATELY MY JOB IS TO PROPERLY INSTRUCT THE JURY.

05:02:12 4   THE ORDER ITSELF, FIRST OF ALL, I THOUGHT ABOUT CALLING IT

05:02:18 5   A TENTATIVE, BUT IT'S REALLY NOT A TENTATIVE BECAUSE IT'S

05:02:22 6   REALLY JUST A PRELIMINARY ORDER BECAUSE THERE ARE OTHER ISSUES

05:02:24 7   I CAN'T DRAW CONCLUSIONS ON YET. SO IT'S A LITTLE UNUSUAL

05:02:24 8   THING TO ASK, BUT IT WOULD BE HELPFUL TO ME TO KNOW YOUR

05:02:24 9   RESPONSE.

05:02:30 10   MR. VAN NEST: YES, WE THINK IT WOULD BE HELPFUL.

05:02:32 11   THE COURT: OKAY.

05:02:32 12   MR. NELSON: I WOULD BE KIND OF SILLY NOT TO TAKE

05:02:35 13   YOUR GUIDANCE, YOUR HONOR, THINK SO I WOULD LIKE TO SEE IT, OF

05:02:38 14   COURSE.

05:02:38 15   THE COURT: IT'S ALWAYS BETTER TO KNOW WHAT I'M

05:02:40 16   THINKING THAN NOT.

05:02:41 17   AND AS I SAY, I DON'T THINK MY ORDER IS IMPORTANT EXCEPT

05:02:43 18   TO THE EXTENT IT INFORMS A PROPER INJURY INSTRUCTION. AND MY

05:02:47 19   WHOLE EFFORT IN ANALYTIC DISSECTION IS TO DO JUST THAT. THAT'S

05:02:50 20   MY VIEW OF IT.

05:02:51 21   MR. VAN NEST: WE SHARE THAT VIEW.

05:02:53 22   THE COURT: WE SHARE THAT VIEW. GOOD.

05:02:55 23   SO IF I DON'T POST IT TONIGHT, I THINK IT WILL BE

05:02:59 24   TOMORROW. SO IT JUST DEPENDS ON HOW MUCH ENERGY I HAVE TO DO

05:03:04 25   FINAL PROOF READING, WHICH IS LIMITED RIGHT NOW.

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05:03:07   1              MR. VAN NEST:  OKAY.

05:03:08   2              THE COURT:  I UNDERSTOOD THIS MORNING FROM THE

05:03:10   3    CONVERSATION ABOUT JURY INSTRUCTIONS THAT THE PARTIES ARE

05:03:13   4    REWORKING, ALTHOUGH STILL IN DISAGREEMENT, INSTRUCTIONS 39 AND

05:03:18   5    41.  AND I WANT TO CONFIRM THAT THAT WOULD THEN TELL ME NOT TO

05:03:22   6    KEEP WORKING WITH WHAT I HAD BEFORE.

05:03:24   7              MR. VAN NEST:  RIGHT.

05:03:25   8          I UNDERSTAND THAT WE -- THE PARTIES ARE MEETING AND

05:03:29   9    CONFERRING AND HOPING TO GET YOU SOMETHING THAT CONDENSES OR

05:03:32  10    NARROWS WHAT OUR DISPUTE IS.  AND WE ARE GOING IT TRY TO KEEP

05:03:37  11    GOING ON THAT THIS EVENING.

05:03:38  12              THE COURT:  OKAY.  GOOD.  THAT'S REALLY THE MAIN

05:03:40  13     ISSUE WE NEED TO TALK ABOUT ON THURSDAY, ISN'T IT.

05:03:43  14              MR. VAN NEST:  I THINK.

05:03:44  15              MS. SULLIVAN:  YES, YOUR HONOR.

05:03:45  16              THE COURT:  GOOD.  OKAY.

05:03:46  17          SO OTHERWISE, YOU ARE WORKING ON WHAT ARE NOW THE EITHER

05:03:51  18     AGREED UPON OR MY CLARIFICATIONS ON THE FINAL JURY INSTRUCTIONS

05:03:54  19     AND THEY SHOULD BE RELATIVELY CLOSE.

05:03:56  20              MS. SULLIVAN:  THAT'S RIGHT, YOUR HONOR.

05:03:57  21          IF I CAN REPORT ON THAT PROCESS.  THE PARTIES ARE MEETING

05:04:00  22     AND CONFERRING.  WE ARE EXTREMELY CLOSE ON ALL OF THE

05:04:03  23     INSTRUCTIONS, EXCEPT FOR 39 AND 41.  IF THERE REMAIN ANY

05:04:06  24     DISPUTES, THERE WILL BE VERY FEW, AND THEY WILL BE EXPRESSED.

05:04:10  25          SO WE PLAN TO POST THE UNDISPUTED ONES WITH ANY REMAINING
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05:04:13   1   OBJECTIONS TO FOLLOW, AND WE WILL WORK ON 39 AND 41. AND IF WE

05:04:19   2   DON'T REACH RESOLUTION ON THOSE, WE WILL POST THOSE AS SOON AS

05:04:22   3   POSSIBLE FOR YOUR HONOR TO REVIEW, NEW VERSIONS OF 39 AND 41.

05:04:25   4   THE COURT: OKAY. GOOD.

05:04:26   5   I'M VERY APPRECIATIVE OF THAT, AND THAT TELLS ME -- I HAVE

05:04:29   6   NOT PUT MORE TIME INTO THE OLD ONES BECAUSE THAT WAS MY

05:04:33   7   UNDERSTANDING. AND AGAIN, I HAVE TO FIGURE OUT WHAT I'M GOING

05:04:35   8   TO SPEND TIME ON, SO NOW THAT'S GOOD.

05:04:37   9   MR. VAN NEST: YOU WERE WORKING ON DEPOSITION

05:04:38 10   TRANSCRIPTS, AS YOU MENTIONED THIS MORNING, I'M SURE.

05:04:40 11   THE COURT: I WAS.

05:04:41 12   MR. VAN NEST: AND WE ARE TOO. SO --

05:04:45 13   THE COURT: YEAH. AND YOU KNOW, I'M GLAD TO WORK ON

05:04:47 14   ANY OF THIS, BUT I WANT IT TO BE OF VALUE. AND SO WHAT I

05:04:53 15   WORKED ON IS NOT OF VALUE.

05:04:54 16   AND I'M A PERSON WHO WORKS AHEAD. I DON'T DO IT ON THE

05:04:58 17   FLY AND I DON'T GIVE IT OUT TO MY LAW CLERKS TO MAKE THESE

05:05:01 18   RULES. SO IT'S SOMETHING I HAVE TO DO, AND I THINK THAT'S WHAT

05:05:04 19   YOU EXPECT FROM EVERY JUDGE, SO THAT IS NO DIFFERENT HERE.

05:05:07 20   MR. VAN NEST: WE WILL.

05:05:07 21   WE ARE GOING TO TELL YOU ASAP THIS EVENING IF THERE'S ANY

05:05:11 22   OTHERS RESOLVED. PATIL IS RESOLVED, AND GOURLAY HAS BEEN

05:05:14 23   RESOLVED.

05:05:14 24   THE COURT: AND GOURLAY.

05:05:15 25   AND I'VE TAKEN CARE OF THE OTHERS, AND YOU MAY NARROW THE

05:05:18 1   SCOPE, WHICH I ENCOURAGE. I ENCOURAGE, BECAUSE THAT'S REALLY

05:05:22 2   THE BEST THING. I DON'T WANT ANYTHING I SAY TO BE READ AS STOP

05:05:26 3   NEGOTIATING, I WANT YOU TO CONTINUE.

05:05:28 4   MR. VAN NEST: RIGHT. NO, WE GET THAT.

05:05:30 5   THE COURT: ALL RIGHT.

05:05:31 6   AND MS. SULLIVAN, YOU INDICATED THAT YOU WOULD BE FILING

05:05:33 7   SOMETHING IN ADDITION ON THE WORKS AS A WHOLE IN COMPARISON?

05:05:38 8   MS. SULLIVAN: YOUR HONOR, WE ARE GOING TO INCLUDE

05:05:40 9   THAT DISCUSSION IN THE INSTRUCTIONS 39 AND 41 ARGUMENT SECTION.

05:05:44 10   THE COURT: THEN I WILL NOT DO ANYTHING ON THAT

05:05:47 11   MYSELF. I'VE PREPARED SOMETHING, BUT I WILL CONSIDER IT, JUST

05:05:50 12   GATHERING MY THOUGHTS.

05:05:53 13   MS. SULLIVAN: THANK YOU, YOUR HONOR.

05:05:53 14   THE COURT: AND MAYBE NO ORDER IS NECESSARY AT ALL,

05:05:56 15   IT MAY JUST BE THE JURY INSTRUCTION, WHICH IS JUST FINE WITH

05:05:58 16   ME.

05:05:58 17   MS. SULLIVAN: THANK YOU, YOUR HONOR.

05:05:59 18   AND THE LAST THING IS WE ARE MEETING AND CONFERRING ON THE

05:06:02 19   CURATIVE INSTRUCTION PERTAINING TO INDUSTRY STANDARD. WE WILL

05:06:06 20   TRY TO SEEK LANGUAGE THAT IS ACCEPTABLE TO BOTH PARTIES, AND IF

05:06:09 21   WE CAN'T, WE WILL SUBMIT SOMETHING TO YOUR HONOR FOR OBJECTION.

05:06:14 22   THE COURT: ALL RIGHT. THAT'S ALL THAT I HAD.

05:06:16 23   MR. PAK, MR. NELSON?

05:06:18 24   MR. NELSON: BEFORE HE STARTS, I JUST HAD THE ONE

05:06:23 25   QUESTION ON THE 4697, THAT WAS -- WE DISCUSSED THIS MORNING,

05:06:26 1   THAT WAS --

05:06:27 2   THE COURT: I'M SORRY, I CAN'T PLACE 4697 RIGHT NOW.

05:06:30 3   MR. NELSON: THAT'S WHY I WAS GOING TO DESCRIBE IT SO

05:06:32 4   YOU DON'T HAVE TO GET THE PAPER.

05:06:34 5   YOU HAD ASKED ABOUT A LISTING BECAUSE, WITH RESPECT TO ALL

05:06:38 6   THE OTHER ELEMENTS, THERE'S ALREADY THE LISTING PER USER

05:06:43 7   INTERFACE THERE.

05:06:43 8   THE COURT: YES.

05:06:44 9   MR. NELSON: AND WITH THE COMMANDS, YOU WANTED

05:06:45 10   SOMETHING ALONG THOSE LINES.

05:06:47 11   AND SO WE DID THAT WITH 4697. WE HAD THE ISSUE EARLIER

05:06:50 12   ABOUT THE COLUMN FOR THE ARISTA INSTRUCTION THAT WE REMOVED.

05:06:55 13   THE COURT: YES.

05:06:56 14   MR. NELSON: WHAT I NEED IS GUIDANCE FROM YOUR HONOR

05:07:00 15   ON HOW YOU WOULD LIKE ME TO DO THAT.

05:07:02 16   WOULD YOU LIKE ME TO DO WITH PROFESSOR ALMEROTH WHEN HE

05:07:06 17   RETAKES THE STAND?

05:07:07 18   THE COURT: THAT MIGHT BE THE BEST WAY. HE COULD

05:07:10 19   PROBABLY DESCRIBE IT BEST. AND I KNOW WE WILL BE SEEING HIM ON

05:07:12 20   THE STAND AGAIN.

05:07:14 21   MR. VAN NEST: ON THAT SUBJECT, YOUR HONOR, I THINK

05:07:16 22   WE SUBMITTED OBJECTIONS TO THIS AT 5:00, SO YOU SHOULD HAVE

05:07:19 23   THOSE AS WELL.

05:07:20 24   THE COURT: I WILL CHECK THEM.

05:07:21 25   MR. VAN NEST: THIS ISN'T A STIPULATED ONE THAT WE'VE

BLACK DIRECT EXAM BY MR. FERRALL (RESUMED)   2154

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05:07:24  1    AGREED ON, SO WE SUBMITTED OBJECTIONS TO THIS.

05:07:26  2            MR. NELSON:  THOSE ARE NEW OBJECTIONS.  THEY OBJECTED

05:07:29  3    YESTERDAY, AND I GUESS WE GOT A NEW SET OF OBJECTIONS NOW.

05:07:32  4            MR. PAK:  YOUR HONOR, JUST -- I DO JUST TO CLEAN UP

05:07:39  5    THE RECORD.  THERE WERE TWO VIDEOS WE PLAYED, NOT IMPEACHMENT

05:07:44  6    VIDEOS BUT ACTUAL EVIDENCE VIDEOS WE PLAYED.  AND YOUR HONOR

05:07:47  7    REQUESTED THAT WE PROVIDE A TRANSCRIPTION OF THOSE PORTIONS.

05:07:49  8            THE COURT:  SO FOR EVERY VIDEO THAT YOU PLAY, I NEED

05:07:54  9    A TRANSCRIPTION OF EVERY ONE.  OR WHAT YOU ARE GOING TO DO IS

05:08:02 10    EXTRACT FROM THE TRANSCRIPTIONS.

05:08:03 11            MR. PAK:  YES, YOUR HONOR.

05:08:03 12       WE HAVE AN AGREEMENT ON THE TRANSCRIPTIONS.  I WOULD LIKE

05:08:05 13    TO OFFER IT INTO EVIDENCE AND HAVE THEM MARKED.

05:08:10 14       TRIAL EXHIBIT 166-A IS THE TRANSCRIPTION OF

05:08:13 15    MR. LINCOLN DALE TRANSCRIPTION OF THE VIDEO THAT WAS PLAYED,

05:08:18 16    THE PORTION THAT WAS PLAYED IN COURT.

05:08:21 17            MR. VAN NEST:  SORRY, ARE YOU OFFERING THESE NOW?

05:08:25 18            MR. PAK:  YES.

05:08:26 19            MR. VAN NEST:  BECAUSE ONE OF THESE IS OBJECTED TO

05:08:27 20     AND THE OTHERS AREN'T.

05:08:29 21            THE COURT:  MR. PAK, WHY DON'T YOU CONTINUE TO LOOK

05:08:30 22    THAT OVER.  THAT SHOULD ULTIMATELY BE RESOLVED.

05:08:34 23            MR. PAK:  WE RESOLVED THEM.

05:08:35 24            MR. VAN NEST:  DID WE?

05:08:36 25     (OFF-THE-RECORD DISCUSSION.)
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05:08:40 1   MR. VAN NEST: ALL RIGHT. I WILL TAKE THAT

05:08:42 2   REPRESENTATION.

05:08:43 3   MR. PAK: SO 166-A. WE ALSO HAVE THE 203-A, WHICH IS

05:08:48 4   THE PACKET PUSHERS PODCAST CLIP THAT WAS PLAYED AND WE RESOLVED

05:08:52 5   THAT DISPUTE AS WELL.

05:08:54 6   SO I WOULD LIKE TO MOVE 166-A AND 203-A TRANSCRIPTIONS

05:08:59 7   INTO EVIDENCE.

05:08:59 8   THE COURT: OKAY. WITHOUT OBJECTION, THEY WILL BE

05:09:03 9   ADMITTED.

05:09:03 10   (PLAINTIFF'S EXHIBIT 166-A AND 203-A WERE ADMITTED INTO

05:09:04 11   EVIDENCE.)

05:09:04 12   MR. VAN NEST: I UNDERSTAND THERE'S NO OBJECTION

05:09:06 13   BECAUSE THESE HAVE BEEN STIPULATED. THAT'S WHAT COUNSEL IS

05:09:08 14   REPRESENTING AND I ACCEPT THAT. IF I FIND OUT OTHERWISE, I

05:09:10 15   COULD LET YOU KNOW.

05:09:12 16   THE COURT: AND DID YOU HAVE ANYTHING, MR. VAN NEST?

05:09:15 17   MR. VAN NEST: TIME WISE, WE WILL BE BACK AT 8:30

05:09:18 18   TOMORROW AND WORK 9 TO 5, AND WE WILL BE WITH YOU FOR JURY

05:09:23 19   INSTRUCTIONS 10 TO 2 ON THURSDAY, NO JURY. AND FRIDAY, WE WILL

05:09:27 20   HAVE A FULL DAY, 9 TO 5.

05:09:29 21   THE COURT: THAT'S CORRECT. THAT'S THE PLAN. THAT'S

05:09:31 22   OUR SCHEDULE.

05:09:31 23   AND MY GOAL WAS, AT THE LATEST, TO HAVE INSTRUCTION AND

05:09:34 24   ARGUMENT ON TUESDAY. I DON'T KNOW HOW MUCH TIME YOU ALL HAVE

05:09:36 25   LEFT, AND YOU HAVE TWO FULL DAYS, SO THE CLOCK SHOULD RUN BY

05:09:40 1   THE END OF THE DAY ON FRIDAY.

05:09:44 2   MR. PAK: WE BELIEVE THAT'S THE CASE.

05:09:45 3   MR. VAN NEST: I THINK YOU ARE GOING TO GET IT THERE.

05:09:48 4   THE COURT: AND ARE YOU GOING TO GET THERE.

05:09:49 5   MR. PAK: YES, WE HAVE A HANDY SPREADSHEET THAT'S

05:09:51 6   BEEN KEEPING TRACK FOR ME.

05:09:53 7   MR. VAN NEST: WE WILL GET TO THE END OF OUR TIME AND

05:09:55 8   THAT WILL BE THE END OF OUR TIME. UNLESS, YOU KNOW, UNLESS YOU

05:10:00 9   TAKE A COUPLE OF HOURS AWAY ON FRIDAY.

05:10:02 10   THE COURT: NO, I'M NOT GOING TO TAKE ANY TIME AWAY.

05:10:04 11   BUT AS YOU CAN SEE, I DON'T STOP THE CLOCK VERY MUCH EITHER.

05:10:07 12   MR. VAN NEST: I'VE NOTICED THAT.

05:10:08 13   THE COURT: BUT YOU'VE HAD WORSE CONDITIONS AND

05:10:10 14   SHORTER TRIALS WITH MORE COMPLEX ISSUES.

05:10:13 15   MR. PAK: NO DOUBT ABOUT THAT. WE APPRECIATE THAT,

05:10:16 16   YOUR HONOR.

05:10:18 17   MR. VAN NEST: THAT'S TRUE TOO.

05:10:18 18   THE COURT: OKAY. I THINK THAT TAKES CARE OF

05:10:19 19   EVERYTHING TODAY.
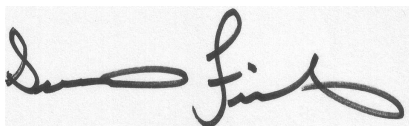
05:10:20 20   SEE YOU IN THE MORNING.

05:10:24 21   (THE PROCEEDINGS WERE CONCLUDED AT 5:10 P.M.)

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4   <u>**CERTIFICATE OF REPORTER**</u>

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8   I, THE UNDERSIGNED OFFICIAL COURT

9   REPORTER OF THE UNITED STATES DISTRICT COURT FOR

10   THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH

11   FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY

12   CERTIFY:

13   THAT THE FOREGOING TRANSCRIPT,

14   CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND

15   CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS

16   SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS

17   HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED

18   TRANSCRIPTION TO THE BEST OF MY ABILITY.

19

20

21

22

23

24   _____
     SUMMER A. FISHER, CSR, CRR
25   CERTIFICATE NUMBER 13185   DATED: 12/6/16